



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1027 N. Randolph Ave.
Elkins, WV 26241

Bill J Crouch
Cabinet Secretary

Jolynn Marra
Interim Inspector General

July 11, 2019

[REDACTED]

RE:

[REDACTED]
ACTION NO.: 16-BOR-1785

Dear Ms. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Health and Human Resources. These same laws and regulations are used in all cases to assure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Pamela L. Hinzman
State Hearing Officer
Member, State Board of Review

Encl: Resident's Recourse to Hearing Decision
Form IG-BR-29

cc: Administrator, [REDACTED]

**WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW**

████████████████████,

Resident,

v.

Action Number: 19-BOR-1785

████████████████████,

Facility.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on June 25, 2019, on an appeal filed May 29, 2019.

The matter before the Hearing Officer arises from the May 10, 2019 decision by the Facility to propose involuntary discharge of the Resident.

At the hearing, the Facility appeared by ██████████, Business Office Manager, ██████████, and ██████████, Administrator, ██████████. The Resident appeared *pro se*.

All witnesses were sworn and the following documents were admitted into evidence.

Nursing Facility's Exhibits:

- NF-1 ██████████ Billing Statements
- NF-2 Resident's bank statements
- NF-3 Notice of Discharge dated May 10, 2019
- NF-4 Notices of Decision from WVDHHR

Resident's Exhibits:

None

FINDINGS OF FACT

- 1) ██████████, hereinafter Facility, provided written notification to the Resident of its intent to initiate involuntary transfer or discharge proceedings on May 10, 2019 (NF-3).
- 2) The Notice of Discharge advised the Resident that involuntary discharge from the Facility was necessary because the Resident failed, after reasonable and appropriate notices, to pay for his stay at the Facility.

- 3) The Notice of Discharge states that the Resident will be discharged to [REDACTED].
- 4) In June 2019, the Resident was approved for backdated Long-Term Care Medicaid benefits effective February 1, 2019 (NF-4).
- 5) The Resident owes the Facility \$9,769.65 as his nursing home resource payment for the period of January 2019 through June 2019.

APPLICABLE POLICY

Medicaid regulations, found in the Code of Federal Regulations (42 CFR §483.15) provide that the nursing facility administrator or designee must permit each resident to remain in the facility, and not be transferred or discharged from the facility unless one of the following conditions is met:

Section 483.15(c)- Transfer and Discharge-

(1) Facility requirements-

- (i) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless-
 - (A) The transfer or discharge is necessary for the resident's welfare when the needs of the resident cannot be met in the facility; or
 - (B) The transfer or discharge is appropriate because the health of the resident has improved sufficiently so the resident no longer needs the services provided by the facility; or
 - (C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident; or
 - (D) The health of individuals in the nursing facility would otherwise be endangered; or
 - (E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

- (F) The facility ceases to operate.
- (2) **Documentation.** When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (c)(1)(i)(A) through (F) of this section, the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

Documentation in the resident's medical record must include:

(A) The basis for the transfer per paragraph (c)(1)(i) of this section.

- (3) **Notice before transfer.** Before the nursing facility transfers or discharges a resident, the facility must-
- (i) Notify the resident and the resident's representative(s) of the transfer or discharge, and the reasons for the move in writing and in a language and manner they understand.
 - (ii) Record the reasons for the transfer or discharge in the resident's medical record in accordance with paragraph (c)(2) of this section; and
 - (iii) Include in the notice the items described in paragraph (b)(5) of this section.

(4) **Timing of the notice.**

- (1) Except as specified in paragraphs (b)(4)(ii) and (b)(8) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(5) **Contents of the notice.**

The written notice specified in paragraph (b)(3) of this section must include the following:

The effective date of the transfer or discharge;

- Reason for transfer or discharge;
- The effective date of the discharge;
- The location to which the resident is transferred or discharged;
- A statement that the resident has the right to appeal the action to the State;
- The name, address and telephone number of the office of the State Long-Term Care Ombudsman;
- The mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled and mentally ill individuals.

DISCUSSION

Federal regulations specify that a nursing facility can involuntarily transfer or discharge an individual if the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility.

The Resident did not dispute the amount of his delinquent bill, but testified that he does not currently have the funds to pay the Facility. He stated that he has offered to make payments on the bill, and that a fund drive is being held to assist him with the cost.

The Facility provided no documentation to verify that the reason for the Resident's discharge has been documented in his medical record.

CONCLUSION OF LAW

- 1) Federal regulations require that documentation – including the specific reason a nursing facility resident requires transfer or discharge - must be included in the resident's medical record.
- 2) No evidence was provided to verify that the reason for the Resident's proposed discharge was recorded in his medical record.
- 3) As there is no evidence that the Resident's medical record includes documentation concerning the reason for transfer or discharge, the Facility's proposal to discharge the Resident cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to REVERSE the Facility's proposal to discharge the Resident.

ENTERED this _____ Day of July 2019.

**Pamela L. Hinzman
State Hearing Officer**