



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF INSPECTOR GENERAL

Bill J. Crouch  
Cabinet Secretary

BOARD OF REVIEW  
State Capitol Complex  
Building 6, Room 817-B  
Charleston, West Virginia 25305  
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Jolynn Marra  
Interim Inspector General

September 10, 2019

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 19-BOR-2127

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,

Angela D. Signore  
State Hearing Officer  
Member, State Board of Review

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

cc: [REDACTED], [REDACTED]

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

██████████,

**Resident,**

v.

**Action Number: 19-BOR-2127**

**WEST VIRGINIA DEPARTMENT OF  
HEALTH AND HUMAN RESOURCES,**

**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' (DHHR) Common Chapters Manual. This fair hearing was convened on August 21, 2019, on an appeal filed August 1, 2019.

The matter before the Hearing Officer arises from the July 11, 2019 decision of ██████████ (Facility) to discharge the resident due to nonpayment of his cost-of-care.

At the hearing, the Respondent appeared by ██████████, Executive Director. Appearing as witnesses for the Facility were ██████████ and ██████████. Appearing as a Representative for the Appellant was ██████████ and appearing as a witness was ██████████.

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

**Facility's Exhibits:**

- F-1           DHHR Medicaid Notice of Eligibility, dated April 02, 2019
- F-2           ██████████ Notice of Discharge, dated July 11, 2019
- F-3           ██████████ Payor Verification Summary and Assignment of Benefits

**Resident's Exhibits:**

None

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

### **FINDINGS OF FACT**

- 1) The Resident is an occupant of the Facility. (Exhibit F-1)
- 2) The Resident receives income through the Social Security Administration.
- 3) The Resident receives Medicaid to financially assist with his cost-of-care at the Facility. (Exhibit F-1)
- 4) Appellant Representative, [REDACTED], is listed as the party financially responsible for the Resident's cost-of-care. (Exhibit F-3)
- 5) Beginning on May 1, 2019, the Resident was responsible for a cost-of-care contribution in the amount of \$2,385 per month. (Exhibit F-1)
- 6) The Resident's total cost of care for the months of May, June, and July 2019 total \$7,155.
- 7) The Appellant's Representative made payments of an unknown amount towards the Resident's cost-of-care through July 2019.
- 8) The Resident's cost of care balance due to the Facility for a portion of July 2019 totaled \$2,224.70.
- 9) The Facility made attempts to work with the Appellant's Representative to address the Resident's cost-of-care balance.
- 10) On July 11, 2019, the Facility issued a notice of involuntary discharge advising the Appellant that he would be discharged to the home of his daughter, [REDACTED], effective August 11, 2019, due to the Resident's failure to pay for or have paid under Medicaid, a stay at the Facility.

### **APPLICABLE POLICY**

West Virginia State Regulations

**West Virginia §64-13-4(13)(d)(4) Notice Before Discharge provides in part:**

Before a nursing home discharges a resident, it shall provide written notice to the resident that includes a statement that the resident has the right to appeal the action to the State Board of Review, with the appropriate information regarding how to do so...

### Federal Regulations

#### **Code of Federal Regulations, 42CFR §483.12(a)(2)(v) Freedom from Abuse, Neglect, and Exploitation provide in part:**

The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicaid) a stay at the facility.

### DISCUSSION

The Resident received Medicaid to financially assist with his care costs at the Facility but was required to pay the Facility for a portion of his cost-of-care. On July 11, 2019, the Facility issued a notice of involuntary discharge advising the Resident that he would be discharged to his daughter's home due to non-payment of his cost-of-care. The Resident's Representative contended that she could not make cost-of-care payments due to other financial obligations.

The Facility had to prove that the Resident failed, after reasonable and appropriate notice, to pay for a stay at the facility. The Facility's representatives testified that written and verbal attempts were made to establish payment arrangements to address the Resident's balance due to the Facility. During the hearing, the Resident's Representative did not contest the Resident's outstanding balance.

As of the date of the hearing, the evidence confirmed that the Resident had a balance due the Facility that totaled \$4,609.70. The Resident's Representative manages the Resident's financial affairs and after reasonable and appropriate notice, chose not to appropriate his financial resources to meet his payment obligation to the Facility for his cost-of-care.

### CONCLUSIONS OF LAW

- 1) The Facility's action to initiate discharge proceedings against the Resident based on his failure to pay for cost-of-care is permitted by state regulations.
- 2) The Resident and Financial Responsible Party received reasonable and appropriate notice that payment to the Facility for his cost-of-care was required.
- 3) The July 11, 2019 notice of discharge was sufficient.

**DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the Facility's proposed discharge of the Resident due to non-payment.

**ENTERED this \_\_\_\_\_ day of September 2019.**

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**Angela D. Signore  
State Hearing Officer**