



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

Bill J. Crouch
Cabinet Secretary

Board of Review
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Jolynn Marra
Interim Inspector
General

October 17, 2019

[REDACTED]

RE: [REDACTED] v. [REDACTED]
ACTION NO.: 19-BOR-2196

Dear Mr. [REDACTED]

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

In arriving at a decision, the Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Resident's Recourse
Form IG-BR-29

cc: [REDACTED], Facility Administrator
[REDACTED], Resident's Friend
[REDACTED], Ombudsman

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

██████████,

Resident,

v.

ACTION NO.: 19-BOR-2196

GENESIS-SISTERSVILLE CENTER,

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 September 25, 2019 an appeal filed August 13, 2019.

The matter before the Hearing Officer arises from the July 25, 2019 determination by the Facility to discharge the Resident from the Facility.

At the hearing, the Facility appeared by ██████████ (Mr. ██████████), Facility Administrator. The Resident was represented by ██████████, Ombudsman. Appearing as a witness for the Resident was ██████████, friend of the Resident. All witnesses were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

F-1 DHHR Pre-Admission Screening, dated July 25, 2019, and PAS, dated July

Resident's Exhibits:

A-1 ██████████ Notice of Discharge, dated July 25, 2019

A-2 West Virginia Code of State Rules (CSR) § 64-13-1

A-3 Code of Federal Regulations (CFR) § 483.15

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Resident was admitted to the Facility on April 27, 2019.
- 2) On July 25, 2019, a Pre-Admission Screening (PAS) was completed to facilitate the Resident's request to transfer to [REDACTED] (Exhibit F-1).
- 3) The July 25, 2019 PAS was denied (Exhibit F-1).
- 4) On July 25, 2019, a notice was issued to the Resident advising him that his request for Medicaid Long-Term Care (LTC) admission had been denied (Exhibit A-1).
- 5) The July 25, 2019 notice advised the Resident would be discharged from the Facility, effective August 26, 2019, "to a location of [his] choosing" due to his health having improved sufficiently such that Facility services were no longer needed (Exhibit A-1).
- 6) Board of Review action number 19-BOR-2187 reversed the decision by the DHHR to deny the Resident's application for LTC based on the medical eligibility determination of the July 25, 2019 PAS. The matter was remanded for completion of a new PAS and eligibility determination.

APPLICABLE POLICY

Code of Federal Regulations 42CFR § 483.15(c)(1)(i)(B) Facility Requirements provides in part:

The facility may transfer or discharge a resident when the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility.

CFR §§ 483.15(c)(2) – 483.15(c)(2)(ii)(A) Documentation provides in part:

When the facility transfers or discharges a resident because the resident's health has improved and the resident no longer requires Facility services, the facility must ensure that the transfer or discharge is documented in the resident's medical record and that appropriate information –including the physician documented basis for transfer-- is communicated to the receiving health care institution or provider.

CFR § 483.15(c)(3)(i) and §§ 483.15(c)(5) – 483.15(c)(5)(iii) Notice Before Transfer and Contents of Notice provide in part:

Before a facility transfers or discharges a resident, the facility must notify the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. The notice must include the reason for

discharge, the effective date of discharge, and the location to which the resident will be transferred.

DISCUSSION

The Facility had the burden of proof. To prove the Resident should have been discharged from the Facility, the Facility had to demonstrate by a preponderance of evidence that the Resident's health had sufficiently improved such that he no longer required the Facility's services. Further, the Facility had to prove that the Resident received sufficient notice of discharge.

The Resident argued that the Facility failed to align a discharge location for the Resident prior to discharge and that no discharge location was reflected on the July 25, 2019 notice. The Facility argued that multiple attempts to align assisted living or homeless shelter placements had been made and that either a location was not available or the Resident refused the location. Policy requires that the discharge notice reflect the location the Resident will be discharged to. As the notice did not establish a discharge location, the Facility failed to appropriately notify the Resident of discharge by including a discharge location as required by federal regulations.

Although insufficient notice is adequate basis for the Board of Review to reverse the Facility's decision, the issue of insufficient notice is secondary to the failure of the Facility to establish by a preponderance of evidence that the Resident's health had improved sufficiently such that Facility services were no longer required. The Facility argued that it relied upon the Resident's July 25, 2019 PAS denial of medical eligibility for LTC when establishing that the Resident's health had improved sufficiently. No other evidence was entered to demonstrate that the Resident's health had improved since admission. The Resident's July 25, 2019 PAS denial was overturned in the October 16, 2019 Board of Review Decision in action number 19-BOR-2187. Because the July 25, 2019 PAS determination was reversed, the basis for the Facility's July 25, 2019 decision to discharge the Resident is invalid.

CONCLUSIONS OF LAW

- 1) A Resident may be discharged from the Facility when the Resident's health has sufficiently improved such that he no longer requires the services provided by the Facility.
- 2) The Facility discharged the Resident based on the July 25, 2019 PAS denial of medical eligibility for LTC.
- 3) The July 25, 2019 PAS denial was reversed in Board of Review action number 19-BOR-2187.
- 4) The evidence failed to demonstrate that the Resident's health had sufficiently improved such that he no longer required the services provided by the Facility.
- 5) The Facility's July 25, 2019 notice of discharge failed to identify a discharge location as required by regulations.

- 6) The Facility's notice was insufficient.
- 7) The Facility incorrectly acted to discharge the Resident to an unknown location based on the July 25, 2019 PAS.

DECISION

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

ENTERED this 17th day of October 2019.

Tara B. Thompson
State Hearing Officer