



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

Bill J. Crouch
Cabinet Secretary

BOARD OF REVIEW
Berkeley County DHHR
PO Box 1247
Martinsburg, WV 25402

Jolynn Marra
Interim Inspector General

February 26, 2020

[REDACTED]

RE: [REDACTED] v. [REDACTED]
ACTION NO.: 20-BOR-1060

Dear [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,

Lori Woodward
State Hearing Officer
Member, State Board of Review

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

cc: [REDACTED], Administrator, [REDACTED]

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

IN RE: [REDACTED],

Resident,

v.

Action Number: 20-BOR-1060

[REDACTED]

Facility.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. 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 February 12, 2020, on an appeal filed January 14, 2020.

The matter before the Hearing Officer arises from the December 19, 2020 decision by the Facility to propose involuntary discharge of the Resident for non-payment.

At the hearing, the Facility appeared by [REDACTED], Business Officer Manager. Appearing as witnesses for the Facility were [REDACTED], Regional Director of Clinical Operations, and [REDACTED], Administrator. The Resident appeared *pro se*. All witnesses were sworn, and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 30 Day Notice of Discharge, dated October 18, 2019
- F-2 [REDACTED] Activity Report, April 18, 2019 to February 5, 2020
- F-3 ACH/Credit Card Payment Authorization Form for Current Accounts not in Collections for a one-time payment of \$3,454.15, signed and dated October 14, 2019
- F-4 ACH/Credit Card Payment Authorization Form for Current Accounts not in Collections for a recurring payment of \$642, signed and dated October 14, 2019
- F-5 ACH Return Items Report (\$3,454.15), dated December 6, 2019
- F-6 ACH Return Items Report (\$642), dated December 5, 2019
- F-7 30 Day Notice of Discharge, dated December 19, 2019
- F-8(1) West Virginia Department of Health and Human Services (DHHR) August 7, 2019 Medicaid Notice of increase in patient responsibility payable to [REDACTED] sent to the Resident
- F-8(2) [REDACTED] Transaction Report by Effective Date Mar 1, 2019 – Mar 31, 2020, April 11, 2019 to February 1, 2020
- F-9 [REDACTED] Transaction Report by Effective Date Nov 1, 2019 – Mar 31, 2020 (collections), December 30, 2019
- F-10 Payments from Payee ([REDACTED]) from April 30, 2019 to January 16, 2020

- F-11 Department of Veterans Affairs statement of Non-Service Connected Veteran's Pension, dated April 29, 2019
- F-12 Wells Fargo Everyday Checking statements from June 27, 2019, May 28, 2019

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 has been residing at [REDACTED] in [REDACTED] (Facility).
- 2) The West Virginia Department of Health & Human Resources (WV DHHR) determined that the Resident's payment liability to the Facility would be \$1,575 per month effective August 1, 2019 for his Long-Term Care costs. (Exhibit F-8(1))
- 3) The Resident, through his payee [REDACTED] remits his Supplemental Security Insurance (SSI) income of \$933, less payee fees, to the Facility for partial payment for his Long-Term Care. (Exhibits F-8(2) and F-10)
- 4) The Resident also receives non-service connected Veteran's pension of \$692 per month, which is deposited into the Resident's private checking account at Wells Fargo. This amount is not remitted to the Facility. (Exhibits F-11 and F12)
- 5) The Facility met with the Resident to discuss his patient liability and payment on August 26, 2019, September 12, 2019, September 26, 2019, and attempted to meet with him on October 10, 2019. (Exhibit F-2)
- 6) On October 18, 2019, a 30-Day Notice of Discharge was delivered to the Resident based on his failure to pay for the stay in the Facility. (Exhibit F-1)
- 7) On November 13, 2019, the Resident agreed to bring his account up to date by signing a bank account withdrawal for his outstanding balance of \$3,454. (Exhibit F-3)
- 8) On November 13, 2019, the Resident agreed to have the amount of \$642 withdrawn monthly from his bank account to pay the remaining patient contribution amount for his Long-Term Care at the Facility. (Exhibit F-4)

- 9) On December 18, 2019, the Facility was informed that the Resident had withdrawn his authorization for the bank account withdrawal of \$3,454.15 and the monthly withdrawals of \$642. (Exhibits F-2, F-5 and F-6)
- 10) On December 19, 2019, the Facility met with the Resident regarding his outstanding balance, which he refused to pay, and requested a fair hearing on the matter.
- 11) The Resident refuses to remit his monthly Veteran's pension to pay the remaining amount of his monthly liability to the Facility.
- 12) The Facility issued another 30-Day Notice of Discharge on December 19, 2019 to "[REDACTED]", on January 19, 2020, due to his failure to pay the full monthly amount of his patient liability to the Facility. (Exhibit F-7)
- 13) As of January 31, 2020, the Resident's total outstanding balance owed to the Facility is \$4787.15 (\$3,454.15 in collections and \$1,333 current arrears). (Exhibits F-8(2) and F-9)

APPLICABLE POLICY

Code of Federal Regulation Title 42 §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:

(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 and the resident's needs cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
- (D) The health of individuals in the facility would otherwise be endangered;
- (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.

The facility may not transfer or discharge the resident while the appeal is pending, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

(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.

(i) Documentation in the resident's medical record must include:

- (A) The basis for the transfer per paragraph (c)(1)(i) of this section.
- (B) In the case of paragraph (c)(1)(i)(A) of this section, the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).

(ii) The documentation required by paragraph (c)(2)(i) of this section must be made by -

- (A) The resident's physician when transfer or discharge is necessary under paragraph (c)(1)(A) or (B) of this section; and
- (B) A physician when transfer or discharge is necessary under paragraph (c)(1)(i)(C) or (D) of this section.

(iii) Information provided to the receiving provider must include a minimum of the following:

- (A) Contact information of the practitioner responsible for the care of the resident
- (B) Resident representative information including contact information.
- (C) Advance Directive information.
- (D) All special instructions or precautions for ongoing care, as appropriate.
- (E) Comprehensive care plan goals,
- (F) All other necessary information, including a copy of the resident's discharge summary, consistent with §483.21(c)(2), as applicable, and any other documentation, as applicable, to ensure a safe and effective transition of care.

(3) Notice before transfer. Before a 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. The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.

(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 (c)(5) of this section.

(4) Timing of the notice.

(i) Except as specified in paragraphs (c)(4)(ii) and (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.

(ii) Notice must be made as soon as practicable before transfer or discharge when -

- (A) The safety of individuals in the facility would be endangered under paragraph (c)(1)(i)(C) of this section;
- (B) The health of individuals in the facility would be endangered, under paragraph (c)(1)(i)(D) of this section;
- (C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (c)(1)(i)(B) of this section;
- (D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (c)(1)(i)(A) of this section; or
- (E) A resident has not resided in the facility for 30 days.

(5) Contents of the notice. The written notice specified in paragraph (c)(3) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;

(v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;

(vi) For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402, codified at 42 U.S.C. 15001 et seq.); and

(vii) For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act.

(6) Changes to the notice. If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available.

(7) Orientation for transfer or discharge. A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.

(8) Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the Office of the State Long-Term Care Ombudsman, residents of the facility, and the resident representatives, as well as the plan for the transfer and adequate relocation of the residents.

DISCUSSION

Federal regulations allow a facility to involuntarily discharge an individual if the individual has failed, after reasonable and appropriate notice, to pay for staying at the nursing facility. The Facility must show by a preponderance of evidence that it followed all federal regulations in its proposed discharge of the Resident.

The WV DHHR determined that the Resident's monthly Long-Term Care liability to the Facility would be \$1,575 per month effective August 1, 2019. The Resident's SSI monthly income of \$933, less payee fees, is remitted to the Facility through his payee [REDACTED]. The Resident also receives non-service connected Veteran's pension of \$692 per month, which is deposited directly into the Resident's private checking account at [REDACTED]. The Resident refuses to remit the VA income to cover the rest of his liability for his Long-Term Care at the Facility. As of the end of January 2020, the Resident owed the Facility a total of \$4,787.15 (\$1,333 in current arrears plus \$3,454.15 in collection).

The Facility's representative, [REDACTED], testified that she met with the Resident to discuss his patient liability and payment on August 26, 2019, September 12, 2019, September 26, 2019, and attempted to meet with him on October 10, 2019. Because the Resident refused to pay the outstanding balance at that time in the amount of \$3,454.15, the Facility issued a 30-Day Notice of Discharge to the Resident on October 18, 2019. On November 13, 2019, the Resident agreed to bring his account up to date by signing an authorization for a withdrawal from his bank account in the amount of \$3,454.15. He also signed an authorization to have the bank withdraw the amount of \$642 from his account monthly to pay the remaining patient contribution amount for his Long-Term Care. Because the Resident had agreed to pay his outstanding balance and to contribute an additional \$642 monthly, the Facility withdrew the October 18, 2019 proposed 30-Day discharge.

On December 18, 2019, the Facility's corporate office notified the Facility that the Resident withdrew his authorization for the bank withdrawals. Ms. [REDACTED] testified she and the Facility Administrator discussed with the Resident the withdrawal of his bank authorizations. Because the Resident refused to pay the outstanding balance owed to the Facility, on December 19, 2019 the Facility issued a 30-Day Notice of Discharge for his failure to pay, stating that he would be transferred to [REDACTED] on January 19, 2020.

The Resident proffered that he should not be charged for his stay at the Facility, alleging that the negligence of the Facility caused him foot/toe trauma. The Resident acknowledged there were no pending court proceedings or court orders to support his contention. Mere allegations by the Resident of negligence on the part of the Facility does not absolve him liability for payment for his cost of care.

The evidence and testimony showed that the Facility acted in accordance with Federal regulations in initiating an involuntary discharge to the [REDACTED] in [REDACTED] after making several attempts to assist the Resident to make payment on the outstanding and accumulating account balances. Whereas, the Resident has failed to pay the outstanding balances for his Long-Term Care after appropriate notice, the Facility's proposed discharge of the Resident is affirmed.

CONCLUSIONS OF LAW

- 1) Federal statutory regulations allow a facility to initiate involuntary transfer/discharge proceedings against a resident if, after reasonable and appropriate notice, the resident fails to pay for a stay at the nursing home.
- 2) The Resident received reasonable and appropriate notice that payment to the Facility for his cost of care was required.
- 3) The Resident continues to refuse to pay his outstanding Long-Term Care balance of \$4,787.15 owed to the Facility.
- 4) The December 19, 2019 notice of discharge met federal statutory regulations.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Facility's proposal to transfer/discharge the Resident.

ENTERED this 26th day of February 2020.

Lori Woodward, State Hearing Officer