



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

April 1, 2020

[REDACTED]

RE: [REDACTED] v. WVDHHR  
ACTION NO.: 20-BOR-1071

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: 20-BOR-1071**

**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 March 6, 2020, on an appeal filed January 15, 2020.

The matter before the Hearing Officer arises from the December 16, 2019 decision of ██████████ (Facility) to discharge the resident due to nonpayment of her cost-of-care.

At the hearing, the Respondent appeared by ██████████, Business Office Manager. Appearing as witnesses for the Facility were ██████████ and ██████████. The Appellant was present and was represented by her daughter, ██████████.

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

**Facility's Exhibits:**

- F-1 ██████████ Medicaid As Primary Payer form, dated June 04, 2019
- F-2 ██████████ Transaction Report, dated March 01, 2020
- F-3 ██████████ account payment authorization, dated October 16, 2019, and withdrawal receipt dated October 16, 2019
- F-4 ██████████ Resident Admission Agreement, dated June 04, 2019; Consent for Student Services, undated; Leave Policy and Procedure, undated; and Admission Agreement Signatures, dated June 04, 2019
- F-5 Resident Fund Management Service Authorization and Agreement, dated June 04, 2019
- F-6 ██████████ Notice of Transfer of Discharge, dated November 12, 2019 and December 16, 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 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 her cost-of-care at the Facility. (Exhibit F-1)
- 4) Beginning on July 1, 2019, and continuing until December 31, 2019, the Resident was responsible for a cost-of-care contribution in the amount of \$836.50 per month. (Exhibit F-2)
- 5) Beginning on January 1, 2020, the Resident was responsible for a cost-of-care contribution in the amount of \$1,011.50 per month. (Exhibit F-2)
- 6) The Resident's total cost-of-care contribution for the months of July 2019 through March 2020, totaled \$8,053.50.
- 7) Payments were made on behalf of the Resident in the amount of \$200 on October 30, 2019, and \$1,500 on December 13, 2019.
- 8) The Resident's cost-of-care contribution balance as of March 2020, totaled \$6,353.50.
- 9) The Facility met with the Resident on multiple occasions to discuss her cost-of-care balance.
- 10) In September, November, and December 2019, invoices were provided by the Facility to address the Resident's cost-of-care balance.
- 11) On November 12, 2019, the Facility issued a notice of involuntary discharge advising the Appellant that she would be discharged to her home effective December 12, 2019, due to the failure to pay for, or have paid under Medicaid, a stay at the Facility.

12) On December 16, 2019, the Facility issued a second notice of involuntary discharge advising the Appellant that she would be discharged to her home effective January 15, 2020, due to the failure to pay for, or have paid under Medicaid, a stay at the Facility.

### **APPLICABLE POLICY**

#### **Bureau for Medical Services (BMS) Manual § 514.6.10 provides, in part:**

As a part of the financial eligibility determination for the Medicaid nursing facilities benefit, the DHHR calculates the dollar amount the individual must contribute to the cost of care every month. The monthly Medicaid payment to the nursing facility will be reduced by the dollar amount of the contribution of the cost of care. The administrator or designee is responsible for collecting the monthly contribution to the cost of care.

#### **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 42 CFR § 483.15(c)(5) explains:**

The written notice must include: the reason for transfer or discharge, the effective date of transfer or discharge, the location to which the resident is transferred or discharged, a statement of the resident's appeal rights, including the name, address (mailing and email), and the 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; the name, address (mailing and email), and telephone number of the Office of the State Long-Term Care Ombudsman.

#### **Code of Federal Regulations 42 CFR § 483.15(c)(ii) provides, in part:**

The Facility may not transfer or discharge the resident while the appeal is pending, unless the failure to discharge or transfer would endanger the health or safety of the Resident or other individuals.

#### **Code of Federal Regulations 42 CFR § 483.15(c)(4) provides, in part:**

The notice of transfer or discharge shall be made by the nursing home at least thirty (30) days before the resident is discharged or transferred, except the notice shall be made as soon as practicable before the transfer or discharge when the safety of persons in the nursing home would be endangered, the health of persons in the nursing home would be endangered, health improves, or the resident has been at the facility less than 30 days.

## DISCUSSION

The Resident received Medicaid to financially assist with her care costs at the Facility but was required to pay the Facility for a portion of her cost-of-care. Federal regulations permit the involuntary discharge of an individual if the individual has failed, after reasonable and appropriate notice, to pay for a stay at a nursing facility. The Facility had to demonstrate by a preponderance of evidence that the Resident had failed, after reasonable and appropriate notice to pay for, or have paid under Medicare or Medicaid, her facility cost-of-care. The Facility must prove it was proper to discharge for non-payment and that it properly noticed discharge.

On November 12 and December 16, 2019, the Facility issued notices containing all necessary elements, including advising the Resident that she would be discharged from the Facility due to non-payment of her facility cost-of-care. The notice included the effective date of transfer and the proposed location of transfer. The notice indicated the Resident was being transferred to home. The notice stated the reason for the discharge as: You have failed after reasonable and appropriate notice to pay for or to have paid by Medicare or Medicaid a stay at the facility.

The Facility's representatives testified that written and verbal attempts were made with the Resident to establish payment arrangements to address the Resident's balance due to the Facility. As of the date of the hearing, the evidence confirmed that the Resident had a balance due the Facility that totaled \$6,353.50. The Resident's Representative assists the Resident with her financial affairs and contended that she was not aware the Resident had out of pocket costs toward her stay at the facility until September 2019. During the hearing, the Resident and her Representative testified that prior to entering the facility, [REDACTED] hospital staff led them to believe that all facility costs for the Appellant would be covered if she was both a Medicare and Medicaid recipient.

The Facility testified that because the Resident had capacity, upon admission, they met with the Appellant and thoroughly discussed all the Resident's admission forms, including the cost-of-care contribution. The Appellant did not contest the facility's testimony but stated because so much information was being discussed at one time, she could not remember being told about her cost-of-care contribution. The evidence demonstrated that the Resident was approved for Medicaid nursing facility benefits and had a cost-of-care contribution in the amount of \$836.50 per month beginning July 1, 2019. Beginning January 01, 2020, the Appellant's cost-of-care contribution was \$1,011.50. The Resident testified she was unable to afford the cost-of-care payments due to other financial obligations that she needed to address before paying the Facility.

On November 12 and December 16, 2019, the Resident was given billing/discharge notices advising her of her monthly cost-of-care obligation and balance due. At the time the Facility issued the December 16, 2019 discharge notice to the Resident, the Resident had made two payments to the Facility totaling \$1,700 that were applied to her July and August 2019 facility cost-of-care balance. Although the Resident had made two payments to the Facility before the Facility's issuance of the December 16, 2019 discharge notice, the amounts were insufficient to satisfy her monthly patient responsibility for her September 2019 through March 2020 facility cost-of-care.

**CONCLUSIONS OF LAW**

- 1) The Facility's action to initiate discharge proceedings against the Resident based on her 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 her cost-of-care was required.
- 3) The December 16, 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 April 2020.**

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**Angela D. Signore  
State Hearing Officer**