



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

Bill J. Crouch  
Cabinet Secretary

BOARD OF REVIEW  
Raleigh County District  
407 Neville Street  
Beckley, WV 25801

Jolynn Marra  
Interim Inspector General

June 25, 2020

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. [REDACTED]

ACTION NO.: 20-BOR-1684

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,

Kristi Logan  
State Hearing Officer  
Member, State Board of Review

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

cc: [REDACTED], Esquire

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

█, A PROTECTED INDIVIDUAL,

Resident,

v.

Action Number: 20-BOR-1684

█,

Facility.

**DECISION OF STATE HEARING OFFICER**

**INTRODUCTION**

This is the decision of the State Hearing Officer resulting from a fair hearing for █, a Protected Individual. 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 16, 2020, on an appeal filed May 22, 2020.

The matter before the Hearing Officer arises from the May 12, 2020, decision by █  
█ to discharge the Resident from its facility.

At the hearing, the Facility appeared by █, Esquire. Appearing as witnesses for the Facility were █, Executive Director and █, Billing Manager. The Resident appeared by █, Adult Protective Services Worker with the Department of Health and Human Resources (DHHR). All witnesses were sworn and the following documents were admitted into evidence.

**Facility's Exhibits:**

Exhibit A Admission Agreement signed May 28, 2019  
Exhibit B Notices of Unpaid Account Balance dated April 24, 2020 and May 11, 2020  
Exhibit C Transaction Report from May 1, 2019 through June 30, 2020  
Exhibit D 30-Day Notice of Discharge dated May 12, 2020  
Exhibit E Physical Progress Notes dated June 5, 2020

**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 was admitted to [REDACTED] (Facility) on May 23, 2019.
- 2) The Resident was approved for Long Term Care Medicaid with her monthly contribution amount to the Facility determined based upon her income of Social Security benefits and a pension from [REDACTED].
- 3) The Facility became payee of the Resident's Social Security benefits and filed a change of address with [REDACTED] on behalf of the Resident to have her pension mailed directly to the Facility.
- 4) The Facility received the Resident's pension in October and November 2019.
- 5) In December 2019, the Facility stopped receiving the Resident's pension check.
- 6) The Facility discovered that a change of address had been filed with [REDACTED] and the Resident's pension checks were being delivered to her address prior to admission to the Facility and were being cashed at a local bank.
- 7) The loss of the Resident's pension towards her monthly contribution for her cost of care created an accumulating unpaid balance to the Facility.
- 8) The Facility notified the Resident verbally and in writing several times that she had an unpaid balance (Exhibit B).
- 9) On May 22, 2020, the Facility issued a 30-Day Notice of Discharge to the Resident and her healthcare surrogate advising that she would be discharged on June 22, 2020 due to non-payment to [REDACTED] (Exhibit D).
- 10) As of June 1, 2020, the Resident owed \$14,439.22 to the Facility for her cost of care (Exhibit C).
- 11) The Resident's physician documented in her medical records on June 5, 2020, that the Resident was being discharged due to non-payment (Exhibit E).

## 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.

**(9) Room changes in a composite distinct part.** Room changes in a facility that is a composite distinct part (as defined in § 483.5) are subject to the requirements of § 483.10(e)(7) and must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.

## DISCUSSION

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. Notice of the proposed discharge must be made 30 days in advance and must include the effective date of the

discharge, the location to which the individual is to be discharged, and the reason for the discharge. Physician documentation in the individual's medical record for the reason for discharge is required.

The Facility proposed an involuntary discharge of the Resident on May 22, 2020 due to non-payment towards her cost of care. The 30-Day Notice of Discharge documented that the Resident would be discharged due to non-payment on June 22, 2020 to her address prior to admission at the Facility. The Resident's physician documented the reason for her discharge in her medical record.

██████████, Billing Manager for the Facility, alleged that the Resident's son requested the address change for the Resident's pension, and he has been cashing the Resident's checks. Ms. ██████████ testified that the Resident was initially uncooperative with the investigation regarding the missing pension checks but has agreed to press charges against her son and the matter has been referred to law enforcement. Ms. ██████████ stated the Facility is unlikely to recoup the money owed for the Resident's care.

██████████, representative for the Resident, testified that although the DHHR is healthcare surrogate for the Resident, the Resident does not have a legal representative for her finances. Ms. ██████████ stated a petition for conservatorship of the Resident has recently been filed and the Resident is paying \$50 a month to the Facility that is allotted for her personal needs towards her unpaid balance. Ms. ██████████ contended that the Resident is a victim of financial exploitation and the unpaid balance at the Facility is through no fault of her own.

Whereas the preponderance of evidence showed that the Facility followed federal regulations in the proposed discharge of the Resident from its facility due to non-payment, the proposed discharge of the Resident is upheld.

### **CONCLUSIONS OF LAW**

- 1) 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.
- 2) The Resident owes an outstanding balance of \$14,439.22 to the Facility.
- 3) The Facility notified the Resident several times of her outstanding balance.
- 4) The 30-Day Notice of Discharge issued by the Facility included the effective date of discharge, the reason for discharge and the location to which the Resident will be discharged pursuant to federal regulations.
- 5) The Resident's medical record documented the reason for her proposed discharge by her physician.
- 6) The Facility followed federal regulations in the proposed discharge of the Resident.

**DECISION**

It is the decision of the State Hearing Officer to uphold the decision of [REDACTED] to discharge the Resident due to non-payment.

**ENTERED this 25<sup>th</sup> day of June 2020.**

---

**Kristi Logan  
State Hearing Officer**