



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

Bill J. Crouch
Cabinet Secretary

Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326

Jolynn Marra
Interim Inspector
General

March 4, 2020

[REDACTED]

RE: [REDACTED] v. [REDACTED]
ACTION NO.: 19-BOR-2845

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 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]

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 September 22, 2019 (Exhibit F-5).
- 2) On December 13, 2019, the Facility issued a notice advising the Resident that effective January 12, 2020, she would be discharged from the Facility to [REDACTED], due to the Resident's failure after reasonable notice to pay for or have paid under Medicare or Medicaid the Resident's stay at the facility (Exhibit F-4).
- 3) The [REDACTED], address is the Resident's home address.
- 4) The Resident's stay at the Facility was paid for by her private insurance, Humana, until October 6, 2019 (Exhibits F-5 and F-6).
- 5) The Humana Predict/Outcome assessment predicted that the Resident's anticipated length of stay would be 14-15 days and that her target discharge date would be October 6, 2019 (Exhibit F-5).
- 6) On Humana's Notice of Medicare Non-Coverage, the Resident was advised that the effective date coverage of her skilled nursing services would end was October 6, 2019, because she no longer required skilled nursing services (Exhibit F-5).
- 7) The Notice of Medicare Non-Coverage indicated that her Medicare provider and/or health plan had determined that Medicare "probably will not pay" for skilled nursing services received after the October 6, 2019 effective date (Exhibit F-5).
- 8) The Notice of Medicare Non-Coverage indicated that the Resident "may have to pay" for any services received after October 6, 2019 (Exhibit F-5).
- 9) On October 4, 2019, the Resident acknowledged by signature that she had received and understood the Notice of Medicare Non-Coverage and that she had been notified that coverage of her services would end on October 6, 2019 (Exhibit F-5).
- 10) The Resident appealed the decision by Humana to cease skilled nursing coverage effective October 6, 2019 (Exhibit F-6).
- 11) The Resident was advised on October 6, 2019, that the original decision to terminate Humana coverage, effective October 6, 2019, was upheld and that the Resident's skilled nursing services would no longer be covered by the Medicare program beginning October 7, 2019, because the Resident no longer required skilled nursing services (Exhibit F-6).

- 12) The Facility assisted the Resident in applying for Medicaid assistance.
- 13) On October 7, 2019, the Resident was advised that she had been approved for Medicaid and that her patient responsibility amount would be \$2,992.41 monthly, beginning on October 1, 2019 (Exhibit F-3).
- 14) On October 7, 2019, the Facility billed the resident \$2,992.41 for her October Facility stay (Exhibits F-1 and F-2).
- 15) On October 16, 2019, Facility staff, [REDACTED], met with the Resident to discuss the amount of monthly resource owed (Exhibit F-1).
- 16) The Resident made no payments toward her resource amount owed to the Facility during October 2019 (Exhibits F-1 and F-2).
- 17) On November 1, 2019, the Facility billed the resident \$2,992.41 for her November Facility stay (Exhibits F-1 and F-2).
- 18) As of November 1, 2019, the Resident's balance due to the Facility was \$5,984.82 (Exhibits F-1 and F-2).
- 19) On November 5, 2019, Facility staff, [REDACTED], met with the Resident to discuss the balance owed for her October and November stays and advised the Resident that if the November balance remained unpaid that the Facility would discharge the Resident for non-payment (Exhibit F-1).
- 20) On November 12, 2019, the Resident made a \$1,000 payment to the Facility (Exhibits F-1 and F-2).
- 21) On November 22, 2019, the Resident made a \$1,600 payment to the Facility (Exhibit F-1).
- 22) On December 1, 2019, the Facility billed the resident \$2,992.41 for her December Facility stay (Exhibits F-1 and F-2).
- 23) As of December 1, 2019, the Resident's balance due to the Facility was \$7,277.64 (Exhibits F-1).
- 24) On December 12, 2019, the Resident made a \$1,100 payment to the Facility (Exhibit F-1).
- 25) On December 24, 2019, the Resident made a \$1,000 payment to the Facility (Exhibit F-1).
- 26) On November 1 and December 1, 2019, the Facility issued notices to the Resident advising her of the balance owed for her October, November, and December 2019 stays at the facility (Exhibit F-2).

APPLICABLE POLICY

Code of Federal Regulations 42CFR § 483.15(c)(1)(E) provides in part:

A Facility may discharge a resident when the resident has failed, after reasonable and appropriate notice, to pay for (or have paid under Medicare or Medicaid) a stay at the facility.

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.

DISCUSSION

The Facility issued a notice advising the Resident that she would be discharged from the Facility due to non-payment of her October, November, and December 2019 facility cost of care. The Resident argued that she did not understand why the cost of care had not been billed to her insurance company.

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, the cost of her October, November, and December 2019 facility cost of care. The evidence demonstrated that effective October 7, 2019, the Resident's Humana insurance ceased payment for the Resident's skilled nursing services. The evidence demonstrated that the Resident was aware and had acknowledged understanding that Humana would cease payment for the Resident's cost of care on October 6, 2019.

The Facility assisted the Resident in applying for Medicaid nursing facility benefits. The evidence demonstrated that the Resident was approved for Medicaid nursing facility benefits and had a monthly patient responsibility amount of \$2,992.41 due to the Facility. The evidence demonstrated that the Resident had been notified in writing of her monthly responsibility amount for her facility cost of care. During the hearing, the Resident testified that she had received the notices advising her of her monthly patient responsibility amount. The evidence further demonstrated that the Facility had spoken with the Resident on October 16 and November 5, 2019, regarding her balance owed and issued balance statements to the Resident on November 1 and December 1, 2019, regarding the amount due for her October, November, and December 2019 facility cost of care.

At the time the Facility issued the December 13, 2019 discharge notice to the Resident, the Resident had made three separate payments to the Facility totaling \$3,700 for her October, November, and December 2019 facility cost of care. Although the Resident had made three

payments to the Facility before the Facility's issuance of the December 13, 2019 discharge notice, the amounts were insufficient to satisfy her monthly patient responsibility amount for her October, November, and December 2019 facility cost of care.

CONCLUSIONS OF LAW

- 1) The Resident is a recipient of the Medicaid nursing facility benefit and is responsible for contributing \$2,992.41 monthly to her facility cost of care, effective October 7, 2019.
- 2) A resident may be discharged from a facility when the resident has failed, after reasonable and appropriate notice, to pay for (or have paid under Medicare or Medicaid) a stay at the facility.
- 3) At the time the Facility issued the December 13, 2019 discharge notice to the Resident, the Resident made three separate payments to the Facility totaling \$3,700 for her October, November, and December 2019 facility cost of care.
- 4) The preponderance of evidence demonstrated that the Resident had been reasonably and appropriately notified of her payment responsibility amount due for her October, November, and December 2019 facility cost of care.
- 5) Because the Resident failed after reasonable and appropriate notice to pay for her October, November, and December 2019 facility cost of care, the Facility's December 13, 2019 action to discharge the Resident, effective January 12, 2020, was correct.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Facility's decision to discharge the Resident due to non-payment of her October, November, and December 2019 facility cost of care.

ENTERED this 4th day of March 2020.

Tara B. Thompson
State Hearing Officer