



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

October 29, 2021

[REDACTED]

RE: [REDACTED] v. [REDACTED]
ACTION NO.: 21-BOR-2102

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, J.D.
Certified 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: 21-BOR-2102

[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 October 13, 2021, on an appeal filed September 15, 2021.

The matter before the Hearing Officer arises from the August 24, 2021 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 Finance, and [REDACTED], Administrator. The Resident appeared *pro se*. All witnesses were placed under oath and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 Payment statements dated May 1, June 1, July 1, September 1, October 1, 2021
- F-2 Electronic mail exchanges from September 17 and September 27, 2021 between the Resident, [REDACTED], and [REDACTED]
- F-3 [REDACTED] Activity Report, from April 11, 2021 to October 5, 2021
- F-4 Notice of Discharge dated August 24, 2021

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) in [REDACTED] on March 19, 2021.
- 2) Medicare paid one hundred percent of the Resident's stay at the Facility from day 1 through day 20 with a co-pay of \$185.50 per day beginning on day 21. (Exhibit F-3)
- 3) The Facility by its policy does not apply for Medicaid on behalf of a Resident unless a Resident provides all necessary documentation regarding their financial circumstances, such as bank statements, which may be needed for a Medicaid application.
- 4) No Medicaid application had been made on behalf of the Resident as of the date of this hearing.
- 5) [REDACTED], the Facility's business office manager, met with the Resident and her Medical Attorney-in-Fact [REDACTED] to discuss the Resident's financial liability on April 11, 2021. (Exhibit F-3)
- 6) Ms. [REDACTED] met with the Resident on April 29, 2021, May 10, 2021, August 10, 2021 to discuss Medicaid eligibility and her payment statements. (Exhibit F-3)
- 7) On August 24, 2021, a 30-Day Notice of Discharge was hand-delivered to the Resident based on her failure to pay for the stay in the Facility. (Exhibit F-4)
- 8) On September 27, 2021, the Facility received a check from the Resident in the amount of \$13,578 towards her outstanding balance. (Exhibit F-3)
- 9) As of the last billing statement dated October 1, 2021, the Resident's balance due was \$63,466, which did not reflect the September 27, 2021 payment.

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 (in pertinent parts):

(c) Transfer and Discharge -

(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.
- (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;

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 Resident was admitted to the Facility on March 19, 2021. Medicare paid one hundred percent of the Resident's stay from day 1 to day 20. After day 20, the Resident was billed a co-pay of \$185.50 per day for room and board at the Facility. On April 30, 2021, the Resident was charged \$321 per day for room and board at the Facility. The September 1, 2021 statement showed that the Resident had a balance of \$53,515. The Facility's representative, [REDACTED], testified that she met with the Resident and Ms. [REDACTED] on April 11, 2021 to discuss the Medicare payments and the Resident's co-pay. Ms. [REDACTED] stated that she met with the Resident on several other occasions to discuss Resident's payment statements and the documentation the Resident needed to provide to the Facility before they would apply for Medicaid for the Resident. The Resident testified that she sent an email to Ms. [REDACTED] with her bank statements attached. Ms. [REDACTED] denies having received any attachments to any of the emails she received from the Resident. Ms. [REDACTED] explained that because the Facility had not received documentation regarding the Resident's financial status, no Medicaid application has been made on her behalf as of the date of this hearing. The Resident maintains that due to computer issues, she has been unable to access her bank statements, even though the Facility has offered access to another computer. The evidence showed

that the Resident also demanded a re-itemization of the monthly bills and failed to make any payment towards her outstanding balance until September 27, 2021, when she made a lump sum payment of \$13,578. The Resident calculated this amount as her monthly income minus \$50 from March 19 through September 19, 2021. The Resident's testimony regarding her inability to access her bank statements to assist in making an application for Medicaid is unconvincing. The evidence presented showed that the Resident was reluctant to provide information regarding her financial status and was prolonging the payment of her outstanding bills.

On August 24, 2021, the Facility hand-delivered a copy of the 30-Day Notice of Discharge to the Resident with a transfer date of September 24, 2021 to [REDACTED]. This notice also included the statutory requirements of appeal rights, and names and contact information for other agencies, including the Office of the Ombudsman.

The Facility showed by a preponderance of evidence that it acted in accordance with statutory regulations in its proposed discharge after making several attempts in assisting the Resident with making payment on the outstanding and accumulating account balances. Whereas, the Resident has failed to pay the outstanding balance for her 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 her cost of care was required.
- 3) The August 24, 2021 notice of discharge met 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 29th day of October 2021.

Lori Woodward, Certified State Hearing Officer