



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
P. O. Box 2590  
Fairmont, WV 26555-2590

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

February 2, 2007

Legal Aid of WV  
\_\_\_\_\_

Attn: \_\_\_\_\_ Esq.

RE: \_\_\_\_\_

Dear Ms. \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 1, 2007. Your hearing request was based on CareHaven of Pleasants' proposal to discharge you from its nursing facility.

In arriving at a decision, the State Hearings 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.

The state and federal regulations that govern the Medicaid Long-Term Care Program state that the transfer and discharge of an individual includes movement of a resident to a bed outside of the certified facility (area) whether or not that bed is in the same physical plant. Among the reasons for which a facility can recommend transfer/discharge is 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. The Code of Federal Regulations provides notification requirements and states that a facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. If the policy was misapplied or other incorrect decision was made, the State Hearing Officer will reverse. {Code of Federal Regulations §42 CFR 483.12 & WVDHHR Common Chapters Manual, Chapter 780.D.1}

The information submitted at your hearing reveals that the transfer / discharge procedure implemented by \_\_\_\_\_ fails to meet the regulatory requirements found in the Code of Federal Regulations.

It is the decision of the State Hearing Officer to **reverse** the proposal of \_\_\_\_\_ to discharge/transfer you from the \_\_\_\_\_ nursing facility.

Sincerely,

Thomas E. Arnett  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
\_\_\_\_\_, Esq., Legal Aid of WV  
Tom Stalek, Administrator, \_\_\_\_\_

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

\_\_\_\_,

**Claimant,**

**v.**

**Action Number: 06-BOR-3423**

**CareHaven of Pleasants,**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on February 2, 2007 for \_\_\_\_\_. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on February 1, 2007 on a timely appeal filed December 15, 2006.

**II. PROGRAM PURPOSE:**

The Program entitled Long Term Care is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

It is a medical service which is covered by the State's Medicaid Program. Payment for care is made to nursing homes which meet Title XIX (Medicaid) standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet financial and medical eligibility criteria.

**III. PARTICIPANTS:**

Tom Stalek, Administrator, [REDACTED]  
Lisa Hoover, Adult Protective Services, WVDHHR  
[REDACTED] Esq., Legal Aid of WV  
[REDACTED] Ombudsman

Presiding at the Hearing was Thomas E. Arnett, State Hearing Officer and a member of the State Board of Review.

**IV. QUESTIONS TO BE DECIDED:**

The question to be decided is if CareHaven of Pleasants is correct in its proposal to involuntarily discharge the Claimant.

**V. APPLICABLE POLICY:**

Code of Federal Regulations §42 CFR 483.12  
WVDHHR Common Chapters Manual, 780.D.1

**VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:**

**Claimant's Exhibits:**

Exhibit-A Notice of Discharge dated October 16, 2006

**Respondents Exhibits:**

██████████ A Balance of payment owed to ██████████ dated 1/29/07

**VII. FINDINGS OF FACT:**

- 1) On or about October 16, 2006, the Claimant's daughter POA/MPOA, \_\_\_\_\_, was notified (Exhibit-A) that ██████████ was initiating involuntary discharge proceedings against the Claimant for failure to pay for a stay at the facility.
- 2) ██████████ Administrator, Tom Stalek, submitted Exhibit ██████████ A to show that the Claimant's current unpaid bill exceeds \$80,000. He purported that non-payment has been an ongoing issue for the Claimant and that ██████████ has made several attempts to remedy the situation. He indicated that his facility would like to continue caring for the Claimant but that ██████████ cannot continue to provide care without compensation.
- 3) As a matter of record, Counsel for the Claimant stipulated that the Claimant owes an excessive amount of money to ██████████ as demonstrated in Exhibit ██████████ A. Counsel contends, however, that it is not the fault of the Claimant, but rather her legal representative who failed to take necessary action. Additionally, it was noted that ██████████ could have initiated legal action for conservatorship per Nursing Home Licensure Rule, W.Va. Code of State Regulations, Title 64, Series 13, section 4.10.g.l.G & 4.10.g.l.H. This decision, however, will not address fault and will focus on the involuntary discharge procedure implemented by ██████████
- 4) Counsel for the Claimant contends that ██████████ failed to comply with federal regulatory requirements in its written notice of discharge because: (1) The doctor was not included in the discharge process, (2) the discharge plan and destination are not viable and there is no clear date of discharge included in the notice.

- 5) The Code of Federal Regulations, found at § 42 CFR 483.12(a) provides regulatory guidelines regarding admission, transfer and discharge rights for the Medicaid, Long-Term Care Program. This regulation states:

(1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(2) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless\_\_\_\_\_

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(ii) 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;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

(v) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

(vi) The facility ceases to operate.

- 6) The Code of Federal Regulations, 42 ' CFR ' 483.12(a)(4&6), addressed written notification regarding transfer and discharge and states that notice 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 that the resident has the right to appeal the action to the State;

(v) The name, address and telephone number of the State long term care ombudsman;

(vi) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(vii) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

- 7) The Code of Federal Regulations, 42 ' CFR ' 483.12(a)(7) - Orientation for transfer or discharge – states that a facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

- 8) WV Department of Health and Human Resources Common Chapters Manual, Chapter 780.D.1 states - If the policy was misapplied or other incorrect decision was made, the State Hearing Officer will reverse.

**VIII. CONCLUSIONS OF LAW:**

- 1) The regulations that govern the Medicaid Long-Term Care Program state that a resident can be transferred / discharged from a nursing facility when payment for a stay at the facility has not been made.
- 2) While [REDACTED] decision to initiate involuntary discharge due to non-payment is in compliance with the Code of Federal Regulations, notification and discharge requirements have not been met. This conclusion is based on the fact that the notice fails to include a clear effective date of discharge and it fails to show sufficient preparation and orientation to ensure a safe and orderly transfer or discharge of the resident from the facility.
- 3) Whereas the evidence submitted by [REDACTED] fails to meet regulatory requirements, the involuntary discharge recommendation cannot be affirmed.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **reverse** the proposal of [REDACTED] to discharge the Claimant from its facility based on the October 16, 2006 notice.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 5<sup>th</sup> Day of February, 2007.**

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**Thomas E. Arnett  
State Hearing Officer**