



State of West Virginia  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
Office of Inspector General  
Board of Review  
235 Barrett Street  
Grafton WV 26354  
July 17, 2006

**Joe Manchin III**  
Governor

**Martha Yeager Walker**  
Secretary

\_\_\_\_\_ for \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Attached is a copy of the findings of fact and conclusions of law on your hearing held April 20, 2006. Your hearing request was based on the proposal of the nursing facility to discharge your aunt.

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.

Federal regulations require that long term care facilities permit each resident to remain in the facility and not discharge or transfer the resident from the facility unless one of six specified circumstances exist. The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility. (42 CFR § 483.12)

The information which was submitted at your hearing revealed that the nursing facility's discharge plan and preparation/orientation for discharge failed to comply with directives

It is the decision of the State Hearing Officer to reverse the proposal of the nursing facility to initiate a discharge effective March 1, 2006.

Sincerely,

Ron Anglin  
State Hearing Examiner  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
\_\_\_\_\_, Administrator, \_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_ Regional Ombudsman

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

\_\_\_\_\_,  
**Resident/Claimant,**

**vs.**

**Action Number 06- BOR- 1272**

\_\_\_\_\_  
**Respondent.**

**SUMMARY AND DECISION OF THE STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on July 17, 2006 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 originally convened on April 20, 2006 on a timely appeal filed February 20, 2006. It should be noted here that the claimant continues to reside in the LTC facility.

**II. PROGRAM PURPOSE:**

The Program entitled **Medicaid; Long Term Care** (nursing facility services) is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

Nursing Home Care 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 standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet both financial and medical eligibility criteria.

**III. PARTICIPANTS:**

\_\_\_\_\_, resident's niece/MPA

\_\_\_\_\_, resident's niece

\_\_\_\_\_, Administrator

\_\_\_\_\_, LSW

\_\_\_\_\_, Business Office manager

\_\_\_\_\_, Regional Ombudsman

Presiding at the hearing was Ron Anglin, State Hearing Examiner and a member of the State Board of Review.

#### **IV. QUESTION TO BE DECIDED:**

The question to be decided is whether the LTC facility followed correct procedures in their proposal to discharge the resident.

#### **V. APPLICABLE POLICY:**

Federal Code of Regulations Title 42 CFR § 483.12  
Medicaid (Provider) Manual Chapter 500, Volume 15 § 511  
Medicaid Program Instruction MA-94-23

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

NH -1- Notice of Discharge, 1/20/06  
NH -2- Account Statements (due) 9/05- 3/06  
NH -3- Payments made 1/27/06- 4/18/06  
CLT-1- Discharge Plan 10/11/05  
CLT-2- Ancillary Services Management Form page 8

#### **VII. FINDINGS OF FACT:**

1) A Notice of Discharge (NH-1) was issued January 30, 2006. On February 20, 2006 a verbal hearing request was received by the Board of Review from Ms. \_\_\_\_\_. A hearing was convened April 20, 2006 at the nursing facility.

2) During the hearing, Exhibits as noted in Section VI were presented.

3) Testimony was heard from the individuals listed in section III above. All persons providing testimony were placed under oath. An argument was received from the ombudsman May 6, 2006.

4) The Notice of Discharge (NH-1) issued January 30, 2006 is addressed to \_\_\_\_\_ at Heartland. The notice states as follows:

Dear Ms \_\_\_\_\_,

This is your official notice of discharge from \_\_\_\_\_ You are being discharged due to non-payment of your account with \_\_\_\_\_

The specific allegations in support of the reason for discharge are:

Account balance as of January 30, 2006 totaling \$24,857.24.

The date of your discharge is March 1, 2006

You will be discharged to \_\_\_\_\_,

Specific discharge plans made by the facility on your behalf are as follows:

\_\_\_\_\_ Social Worker, \_\_\_\_\_ will assist you and your family with discharge planning and arrangements.

The remainder of the notice sets forth the appeal process with attachments consisting of request forms.

5) Exhibit NH-3, payments made from /27/06- 4/18/06 reveal that the resident made a total of \$18,617.91 in payments. These payments are noted as Social Security benefits, [REDACTED] Finance, RTF, and \_\_\_\_\_.

6) Testimony reveals Ms \_\_\_\_\_ entered the facility 6/23/05. Medicare paid for the initial period. With coinsurance the first 100 days were paid for. She became a private pay in September 2005. A Medicaid application was made and denied based on assets. Her current bill exceeds \$25,000. The family was billed monthly. A discharge notice was sent 1/30/06. Some funds have been received since the notice was sent (NH-3). There is currently no individual or party legally capable of liquidating the assets of the resident. A conservator needs appointed which will require a court action. The ombudsman is currently working with the resident in reapplying for Medicaid. The facility indicated that placement upon discharge and orientation/preparation would have been clarified at actual discharge.

7) The Code of Federal Regulations Title 42 CFR § 483.12 (a) (2), a nursing 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 (or have paid under Medicare or Medicaid) a stay at the facility.** 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
- (vi) The facility ceases to operate.

8) The Code of Federal Regulations Title 42 CFR § 483.12(a) (6), states that the written notice specified in paragraph (a) (4) 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 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.

9) The Code of Federal Regulations Title 42 CFR § 483.12(a) (7), states:

Orientation for transfer or discharge. A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

10) West Virginia Medicaid Program Instruction MA-94-23 states in part: The nursing facility must develop a discharge plan before a resident is voluntarily or involuntarily transferred or discharged.

## **VIII. CONCLUSIONS OF LAW:**

1) Policy reveals that a nursing facility must permit each resident to remain in the facility and discharge the resident from the facility unless the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility. Evidence reveals that as of January 30, 2006 the resident's account balance was \$24,857.24. Evidence also reveals that during the period 1/27/06 – 4/18/06 the resident paid a total \$18,617.91 to the LTC facility. While it appears the resident has made a significant effort to pay her bill obviously she has not paid the balance and is therefore in arrears. The nursing facility has therefore met the initial requirement to initiate a discharge.

2) Policy provides that a facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. Evidence fails to support a finding that these issues were adequately addressed prior to the proposed discharge.

3) Medicaid directives indicate that the nursing facility must develop a discharge plan before a resident is voluntarily or involuntarily transferred or discharged. The discharge plan from the notice of January 30 states: "[REDACTED] will assist you and your family with discharge planning and arrangements." Directives suggest that a discharge plan be reasonably detailed and a part of the notification. Evidence offered fails to establish the adequacy of the facility's stated discharge plan.

## **IX. DECISION:**

After reviewing the information presented during the hearing and the applicable policy and regulations, I am ruling to reverse the January 30, 2006 proposal of the nursing facility to discharge Ms. \_\_\_\_\_. I am unconvinced by evidence offered that the resident was properly notified of the discharge and adequate orientation/preparation provided.

**X. RIGHT OF APPEAL**

See Attachment.

**XI. ATTACHMENTS**

The Claimant's Recourse to Hearing Decision.

Form IG-BR-29.

**ENTERED this 17<sup>th</sup> day of July 2006,**

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**RON ANGLIN**  
**State Hearing Examiner**