



State of West Virginia  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of Inspector General  
Board of Review  
1027 N. Randolph Ave.  
Elkins, WV 26241

Joe Manchin III  
Governor

Martha Yeager Walker  
Secretary

November 6, 2008

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

Dear \_\_\_\_\_:

Attached is a copy of the findings of fact and conclusions of law on your hearing held October 28, 2008. Your hearing request was based on \_\_\_\_\_ proposal to discharge your mother from its long-term care facility.

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.

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. (Code of Federal Regulations §42 CFR 483.12)

Information submitted at your hearing reveals that the transfer/discharge procedure implemented by \_\_\_\_\_ is in compliance with the Code of Federal Regulations.

It is the decision of the State Hearing Officer to **uphold** \_\_\_\_\_ proposal to discharge your mother from its facility based on non-payment.

Sincerely,

Pamela L. Hinzman  
State Hearing Officer  
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review  
\_\_\_\_\_, counsel for nursing facility

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

\_\_\_\_\_,  
**Claimant,**

**v.**

**Action Number: 08-BOR-1936**

**Respondent.**

**DECISION OF STATE HEARING OFFICER**

**I. INTRODUCTION:**

This is a report of the State Hearing Officer resulting from a fair hearing concluded on November 6, 2008 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 October 28, 2008 on a timely appeal filed August 19, 2008. The hearing was originally scheduled for September 5, 2008, but was rescheduled at the request of the Claimant.

**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:

\_\_\_\_\_, Claimant's son  
\_\_\_\_\_, Executive Director, \_\_\_\_\_  
\_\_\_\_\_, Office Manager, \_\_\_\_\_  
\_\_\_\_\_, Administrative Director, \_\_\_\_\_  
\_\_\_\_\_, counsel for nursing home

Presiding at the hearing was Pamela L. Hinzman, State Hearing Officer and a member of the State Board of Review.

It should be noted that all parties participated telephonically.

### IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether \_\_\_\_\_ is correct in its proposal to involuntarily discharge the Claimant's mother from its facility.

### V. APPLICABLE POLICY:

Code of Federal Regulations Section 42 CFR 483.12  
West Virginia Code Section 64-13-4

### VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

#### Nursing Facility Exhibits:

NF-1 Admissions Agreement signed August 5, 2006  
NF-2 Letters to \_\_\_\_\_ from \_\_\_\_\_ (five letters from the period of January 2008 to June 2008)  
NF-3 Notification of Transfer/Discharge  
NF-4 Promissory Note signed by \_\_\_\_\_ on June 30, 2008  
NF-5 Contact Log  
NF-6 West Virginia Code Section 64-13-4

### VII. FINDINGS OF FACT:

- 1) The Claimant's mother, \_\_\_\_\_, is a recipient of Medicaid Long-Term Care benefits and was admitted to \_\_\_\_\_ in August 2006. On August 5, 2006, the Claimant's son/Power of Attorney signed an Admission Agreement (NF-1), agreeing to the financial obligations associated with his mother's care. *(It should be noted that as a recipient of Medicaid Long-Term Care, \_\_\_\_\_ is required to pay a monthly resource amount from her income toward the cost of care.)*

- 2) Witnesses for the nursing facility testified that the Claimant made timely payments for his mother's portion of nursing home costs until October 2007, at which time the payments ceased.
- 3) On January 23, 2008, the facility's executive director sent a letter (NF-2) to the Claimant indicating that \_\_\_\_\_ had an unpaid balance of \$5,037.40 and requesting that the Claimant make payment arrangements. The nursing facility received no response from the Claimant and sent subsequent letters requesting payment on February 21, 2008 and March 24, 2008 (NF-2). The Claimant again failed to respond.

On April 7, 2008, the nursing facility sent a letter (NF-2) to the Claimant requesting payment on the accrued past due balance of \$9,144.40 within 10 days. This letter listed remedies available to the nursing home concerning non-payment of the account, including the potential discharge of the Claimant's mother from the facility. The facility received no response and sent a similar letter to the Claimant on June 26, 2008 (NF-2).

- 4) On June 30, 2008, the Claimant visited the nursing home and signed a Promissory Note (NF-4), agreeing to pay the past due balance of \$13,122.10 in six successive monthly installments of \$2,187.01.
- 5) The nursing facility failed to receive payment and sent a Notification of Transfer/Discharge (NF-3) to the Claimant on July 29, 2008. The notice indicated that \_\_\_\_\_'s discharge would be effective August 28, 2008 pending her acceptance to an alternate facility.
- 6) The Claimant contacted the WVDHHR Board of Review on August 19, 2008 to request a fair hearing concerning the proposed transfer/discharge.
- 7) The Claimant testified that he had personally used his mother's monthly checks because he is in poor health and misunderstood his payment obligation to the nursing home. He stated that it would be difficult for his mother to transfer to another facility and that he does not believe his mother should be punished for his non-payment. The Claimant testified that he had believed the Promissory Note agreement required him to pay \$100 per month to the nursing home instead of \$2,100 monthly.
- 8) 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.
- 9) The Code of Federal Regulations, 42 ' CFR ' 483.12(a) (4&6), addresses written notification requirements 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.
- 10) West Virginia Code Section 64-13-4.13.b (NF-6) states that a nursing home shall permit each resident to remain in the long-term care facility unless: 4.13.b.4- "The resident has failed, after reasonable and appropriate notice, to pay for a stay in the nursing home..."
- 11) West Virginia Code Section 64-13-4.13.e (NF-6) states that the notice of transfer or discharge shall be made by the nursing home at least thirty (30) days before the resident is discharged or transferred.

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

- 1) Regulations governing the Medicaid Long-Term Care Program state that a resident can be transferred/discharged from a nursing home when the resident fails to pay his/her portion of the long-term care costs.
- 2) [REDACTED] sent no fewer than five letters to the Claimant requesting that payment arrangements be made on his mother's past due balance prior to sending its Notification of Transfer/Discharge on July 29, 2008. The Claimant had failed to respond to all of the facility's payment requests until June 2008 when he signed a Promissory Note agreement, on which he defaulted.

As the Claimant paid his mother's portion of nursing home costs in a timely manner for over a year before the payments ceased, his contention that he misunderstood the payment policy is both unreasonable and devoid of credibility.

- 3) The nursing facility followed Federal and State regulatory guidelines in regard to transfer/discharge procedures based on non-payment. Therefore, its proposal to discharge \_\_\_\_\_ is affirmed.

**IX. DECISION:**

It is the decision of the State Hearing Officer to **uphold** the proposal of Webster Nursing & Rehabilitation Center to involuntarily discharge the Claimant's mother from its facility.

**X. RIGHT OF APPEAL:**

See Attachment

**XI. ATTACHMENTS:**

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

**ENTERED this 6<sup>th</sup> Day of November, 2008.**

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**Pamela L. Hinzman**  
**State Hearing Officer**