



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 14, 2008

_____ for _____

Dear _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 6, 2008. Your hearing request was based on _____'s proposal to discharge you 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** _____'s proposal to discharge you 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
Administrator, _____

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

_____,

Claimant,

v.

Action Number: 08-BOR- 2215

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 14, 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 November 6, 2008 on a timely appeal filed September 30, 2008.

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
_____, Social Worker, _____
_____, Business Office Manager, _____
_____, Administrator, _____
_____, Social Worker, _____

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

IV. QUESTIONS TO BE DECIDED:

The question to be decided is whether _____ is correct in its proposal to involuntarily discharge the Claimant 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 Alternative placement contacts
- NF-2 Information from Division of Motor Vehicles
- NF-3 Notice of Transfer/Discharge dated September 29, 2008
- NF-4 _____ payment ledger information
- NF-5 Vehicle information

VII. FINDINGS OF FACT:

- 1) The Claimant is a resident of _____ nursing facility and was previously eligible to have his nursing home costs covered by Medicare. He is now considered a recipient of non-skilled services and is no longer eligible for Medicare coverage for long-term care.
- 2) Witnesses for the nursing facility testified that the Claimant is ineligible for Medicaid Long-Term Care benefits due to excessive assets and the Claimant has been unable to pay his entire monthly nursing home costs for several months. The [REDACTED] Business Officer Manager testified that the Claimant currently owes the nursing home \$79,013.55 (D-4). The nursing home representatives indicated they are working with DHHR to clarify issues concerning the Claimant's assets.
- 3) The nursing facility sent a Notification of Transfer/Discharge (NF-3) to the Claimant on September 29, 2008 based on non-payment. The notice indicates that the Claimant's discharge would be effective pending appropriate placement in an alternative facility.
- 4) The WVDHHR Board of Review received a fair hearing request from the Claimant on September 30, 2008 concerning the proposed transfer/discharge.
- 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), 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.

7) West Virginia Code Section 64-13-4.13.b 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..."

8) West Virginia Code Section 64-13-4.13.e 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) Information presented during the hearing reveals that the Claimant has been unable to pay his total monthly nursing home costs for several months and owes _____ more than \$79,000.
- 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 the Claimant is affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to **uphold** the proposal of _____ to involuntarily discharge the Claimant from its facility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 14th Day of November, 2008.

**Pamela L. Hinzman
State Hearing Officer**