



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
1400 Virginia Street
Oak Hill, WV 25901

Joe Manchin III
Governor

Patsy A. Hardy, FACHE, MSN, MBA
Cabinet Secretary

December 7, 2009

Dear -----:

Attached is a copy of the findings of fact and conclusions of law on your hearing held November 18, 2009. Your hearing request was based on -----'s proposal to discharge you from their 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.

Regulations governing nursing home discharges state that the discharge notice must include the location of where the facility resident is to be transferred or discharged to (Code of Federal Regulations, 42 CFR § 483.12).

The information submitted at your hearing revealed that ----- failed to give proper notification of your proposed discharge by failing to specify where you are to be discharged to.

It is the decision of the State Hearings Officer to **Reverse** the proposal of ----- to discharge you from their facility.

Sincerely,

Kristi Logan
State Hearings Officer
Member, State Board of Review

cc: Chairman, Board of Review

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

-----,

Claimant,

v.

Action Number: 09-BOR-2163

-----,

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 18, 2009 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 18, 2009 on a timely appeal, filed October 30, 2009.

II. PROGRAM PURPOSE:

Medicaid Regulations at §42 CFR 483.12 provide for admission, transfer and discharge rights for residents of Nursing Facilities. A facility must permit each resident to remain in the facility and not be transferred or discharged unless at least one of six specified criteria is met. Further, facility may not discharge or transfer a resident until he or she has received proper and timely advance notice of the proposed action including the right to appeal.

III. PARTICIPANTS:

-----, Claimant

-----, Witness for Claimant

-----, Witness for Claimant

-----, Administrator, -----

Presiding at the Hearing was Kristi Logan , State Hearing Officer and a member of the Board of Review.

IV. QUESTION TO BE DECIDED:

The question to be decided is whether or not -----'s proposed discharge is correct.

V. APPLICABLE POLICY:

Code of Federal Regulations § 42 CFR 483.12

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Facility's Exhibits:

- F-1 Order to Reduce Bond dated February 9, 2007
- F-2 Discharge Notice dated October 30, 2009

Claimants' Exhibits:

- C-1 Order to Modify Bond dated February 15, 2008

VII. FINDINGS OF FACT:

- 1) Claimant is a resident of ----- nursing facility for rehabilitation for injuries sustained in a car accident. ----- issued a discharge notice to Claimant on October 30, 2009 which read in part (F-2):

This is your official notice of discharge from ----- . You are being discharged for the following reason marked below:

The safety of other individuals is endangered.

The specific allegations in support of the reason(s) are: Due to the facility to protect and act within the best interest of our patient population, employees, and visitors.

The date of your discharge is 11/29/2009 either to your home or another nursing facility. The Social Worker will assist you and your family with the discharge planning and arrangements.

- 2) -----, administrator for -----, testified to the proposed discharge of Claimant. It was discovered that Claimant has criminal charges pending in [REDACTED] for sexual assault. The conditions of Claimant's bond stated "he is not allowed any contact with the victims or any minor children" (F-1). -----stated due to the nature of the facility, they are unable to comply with the terms of Claimant's bond.

-----stated children and grandchildren are daily visitors of the facility which is expected to increase around the holidays. Initially Claimant was immobilized to his bed but has

been progressing in his therapy and they are now unable to limit his access in the facility. -----stated the proposed discharge is to ensure the safety of their patients, employees and visitors.

- 3) Claimant's daughter, -----, testified that Claimant has nowhere to go if he is discharged. -----was also injured in Claimant's car accident is on crutches. -----stated she is physically unable to provide care for her father at this time.

-----stated Claimant's bond was modified in 2008 to allow him to move to West Virginia and reside with her until his trial (C-1). His trial has been postponed since 2006 and the matter would have been resolved by now if they had not had the car accident.

- 4) Claimant testified he is not guilty of the charges pending against him and felt it unfair for it to be held against him when has yet to be convicted. He stated he has shown everyone in the facility nothing but respect.
- 5) Code of Federal Regulations § 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) 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 [emphasis added]:

- (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.

VIII. CONCLUSIONS OF LAW:

- 1) The regulations that govern resident discharge from nursing facilities require notice to the Claimant advising him of the transfer or discharge location. The notice from the facility explained that staff would be available to help the Claimant with discharge planning, but did not provide a specific transfer or discharge location.
- 2) Testimony from Claimant's daughter revealed that she is physically unable to care for Claimant if he is discharged from the facility. There have been no arrangements made for Claimant's transfer to another nursing facility and there is no one to care for him if discharged to his daughter's home.
- 3) Due to the omission of a definite location in which Claimant is to be discharged/transferred to, Claimant was not given proper notification of his proposed discharge as required by federal regulations. A discharge to Claimant's daughter's home when she is unable to provide care for him poses safety risks. ----'s proposed discharge is incorrect.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposed discharge of Claimant from ---- nursing facility. This decision is based on Claimant's circumstances as of the date of the hearing.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 7th day of December 2009.

**Kristi Logan
State Hearing Officer**