



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
P.O. Box 1247
Martinsburg, WV 25402

Jim Justice
Governor

Bill J. Crouch
Cabinet Secretary

October 18, 2017

[REDACTED]

RE: [REDACTED], A PROTECTED INDIVIDUAL v. [REDACTED]
ACTION NO.: 17-BOR-2445

Dear Mr. [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

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.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Lori Woodward
State Hearing Officer
Member, State Board of Review

Encl: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: [REDACTED], [REDACTED]

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

IN RE: [REDACTED], A PROTECTED INDIVIDUAL,

Resident,

v.

Action Number: 17-BOR-2445

[REDACTED]
Facility.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED], a Protected Individual. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' Common Chapters Manual. This fair hearing was convened on October 4, 2017, on an appeal filed September 8, 2017.

The matter before the Hearing Officer arises from the decision by the Facility to propose involuntary discharge of the Resident from its facility on September 9, 2017 for non-payment.

At the hearing, the Facility appeared by [REDACTED], Executive Director. Appearing as a witness for the Facility was [REDACTED], Business Office Manager. Resident [REDACTED] appeared by her nephew [REDACTED], and her sister and Medical Attorney-in-Fact, [REDACTED]. All witnesses were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 West Virginia Department of Health and Human Services (DHHR) verification request dated March 15, 2017 for the Appellant's Long-Term Care Medicaid application showing a due date of March 15, 2017 sent to [REDACTED] at the Facility's address
- F-2 Copy of the Evaluation Report of Licensed Physician/Psychologist signed and dated June 16, 2017
- F-3 Copy of [REDACTED] Outstanding Account Activity Report from March 6, 2017 to September 27, 2017
- F-4 Copy of [REDACTED] Transaction History by Effective Date Apr 1, 2017 – Oct 31, 2017

Resident's Exhibits:

- A-1 Copies of electronic mail (email) between the Facility and [REDACTED] from April 12, 2017 to May 9, 2017
- A-2 Copies of email between the Facility and [REDACTED] and [REDACTED] from March 21, 2017 to July 19, 2017
- A-3 30-Day Discharge Notice, undated

A-4 Notice of Hearing in the Circuit Court of ██████ County, West Virginia in re Petition for Guardianship Appointment

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) Resident ██████ was admitted to the Facility on March 1, 2017, and was private pay through United Health Care, which ended in April 2017.
- 2) Resident ██████ has a diagnosis of advanced dementia. (Exhibit F-2)
- 3) Resident ██████ sister, ██████, who resides in ██████ is her Medical Attorney-in-Fact.
- 4) An application for Long-Term Care (LTC) Medicaid was made on behalf of the Resident to the West Virginia Department of Health and Human Resources (DHHR).
- 5) On March 15, 2017, the DHHR requested verification as follows with a due date of the same date, March 15, 2017 (Exhibit F-1):
 - Permission slip or Durable Power of Attorney papers
 - Transamerica life insurance verification-Policy numbers, face and current cash value
 - Gross SSA income
 - Gross Pension-Award letter or Pay stub
 - Written verification of whose BB&T account # ██████ is? If [Resident ██████,] will need last 3 months bank statements [name redacted]
- 6) The DHHR denied the Long-Term Care Medicaid application on April 12, 2017 for failure to return the requested verifications.
- 7) On April 12, 2017, Mr. ██████ requested the Facility have their physician sign an Evaluation Report of Licensed Physician/Psychologist (Physician Report) so that he could file for a Petition for Guardianship of Resident ██████ (Exhibit A-1)
- 8) The Facility did not obtain the signed Physician Report until June 16, 2017. (Exhibit A-2)
- 9) Notice of 30-Day Discharge with the proposed discharge effective September 9, 2017 was sent to Ms. ██████ noting the reason for the discharge as, “[t]he resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party,

including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay.” (Exhibit A-3)

- 10) No evidence was presented that Resident [REDACTED] medical/clinical record contained documentation regarding the reason for the proposed transfer or discharge.
- 11) No evidence was presented that showed the Facility has assisted Ms. [REDACTED] in finding reasonably appropriate alternative placement for Resident [REDACTED] prior to the proposed transfer/discharge of September 9, 2017.
- 12) There is no location of discharge noted on the 30-Day Discharge Notice. (Exhibit A-3)

APPLICABLE POLICY

Federal Regulations:

The Code of Federal Regulations, 42 C.F.R. § 483.15(c)(1)(i), limits the conditions under which residents may be discharged. Among these allowed discharges includes failure of the resident, after reasonable and appropriate notice, to pay for a stay at the facility. (See 42 C.F.R. § 483.15(c)(1)(i)(E))

42 C.F.R. § 483.15(c)(2), directs a facility when transferring/discharging a resident under any of the circumstances specified in paragraphs (c)(1)(i)(A) through (F) of this section, that the facility ensure that the transfer/discharge be documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

(i) Documentation in the resident's medical record must include:

(A) The basis for the transfer per paragraph (c)(1)(i) of this section.

42 C.F.R. § 483.15(c)(5) has specific content requirements that must be included in the Notice of transfer/discharge prior to the actual discharge or transfer, including the location where the resident will be transferred or discharged.

42 C.F.R. § 483.15(c)(7) requires the facility to provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

West Virginia State Regulations:

W. Va. Code § 64-13-4(c)(1) requires documentation of the reason for the transfer or discharge be made in the resident's clinical record.

W. Va. Code § 64-13-4(d)(1)(C) requires that the written notice of the transfer/discharge of a resident include the location or other nursing home to which the resident is being transferred/discharged.

W. Va. Code § 64-13-4(f)(2) requires in cases of involuntary transfer that the nursing home assist the resident and/or legal representative in finding a reasonably appropriate alternative placement **prior** to the proposed transfer or discharge and develop a plan designed to minimize any transfer trauma to the resident. [Emphasis added]

DISCUSSION

State and federal regulations allow for nursing facilities to transfer/discharge a resident if such action is necessary because the resident has failed, after reasonable and appropriate notice, to pay for a stay at the nursing home. The resident's medical/clinical record must contain the reason for the transfer/discharge. There was no evidence submitted to show that Resident [REDACTED] medical/clinical record contained the reason for her proposed transfer/discharge.

Federal and state regulations require that a facility assist the resident and/or legal representative in finding a reasonably appropriate alternative placement prior to the proposed transfer/discharge. There was no evidence presented that the Facility attempted to find a reasonably appropriate alternative placement prior to the proposed transfer/discharge. Additionally, federal and state regulations require that the discharge notice provide a location of transfer/discharge. The 30-Day Notice of Discharge of Resident [REDACTED] did not provide a proposed location of transfer/discharge.

Whereas, the Facility did not show that it followed all required federal and state regulations prior to transfer/discharge, its proposed transfer/discharge of Resident [REDACTED] cannot be affirmed.

CONCLUSIONS OF LAW

- 1) A facility is permitted by state and federal regulations to initiate involuntary transfer/discharge proceedings against a resident if, after reasonable and appropriate notice, the resident fails to pay for a stay at the nursing home.
- 2) A facility must follow all state and federal regulations prior to a transfer/discharge of a resident.
- 3) The Facility did not provide evidence of documentation in Resident [REDACTED] medical/clinical records regarding the reason for the proposed transfer/discharge.
- 4) The Facility did not show it has assisted Resident [REDACTED] legal representative in finding an appropriate placement prior to Resident [REDACTED] proposed discharge.
- 5) The 30-Day Discharge Notice did not include the discharge location.

- 6) Because the Facility has not complied with all the state and federal regulations required prior to an involuntary transfer/discharge, the Facility's proposed action to proceed with the involuntary transfer/discharge of Resident [REDACTED] cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Facility's proposal to transfer/discharge the Resident.

ENTERED this 18th day of October 2017

Lori Woodward, State Hearing Officer