



**STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL**

Bill J. Crouch
Cabinet Secretary

**Board of Review
416 Adams Street Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326**

M. Katherine Lawson
Inspector General

August 23, 2018



RE: [REDACTED] v. [REDACTED]
ACTION NO.: 18-BOR-1868

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

Tara B. Thompson
State Hearing Officer
State Board of Review

Enclosure: Resident's Recourse
Form IG-BR-29

cc: [REDACTED], [REDACTED]
[REDACTED], Legal Aid

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

██████████,

Resident,

v.

ACTION NO.: 18-BOR-1868

BRIGHTWOOD CENTER,

Facility.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on August 8, 2018, on an appeal filed June 13, 2018.

The matter before the Hearing Officer arises from the June 13, 2018 determination by the Facility to discharge the Resident from Brightwood Center.

At the hearing, the Facility appeared by ██████████, former Facility Administrator. Appearing as witnesses on behalf of the Facility were ██████████, Facility Administrator; ██████████, RN Clinical Reimbursement Coordinator; ██████████, Director of Nursing; and ██████████, Social Worker. The Resident appeared and was represented by ██████████, Ombudsman. All witnesses were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

None

Resident's Exhibits:

- A-1 West Virginia Code of State Regulations §64-13-1 and §64-13-2
- A-2 Code of Federal Regulations §483.15
- A-3 Resident Assessment and Care Screening, dated June 29, 2018
- A-4 Facility Progress Notes, dated June 9, 2018 through July 19, 2018; Patient Care Plan, printed July 11, 2018
- A-5 Pre-Admission Screening (PAS) Physician Recommendations, dated June 11, 2018

Joint Exhibits:

- J-1 Notice of Involuntary Discharge, dated June 13, 2018; PAS Determination, signed June 12, 2018

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Resident was admitted to the Facility March 3, 2017. (Exhibit A-4)
- 2) On June 11, 2018, a PAS was completed to determine the Resident's continued eligibility for nursing home level of care. (Exhibits J-1 and A-5)
- 3) The PAS medical eligibility determination indicated that the Resident did not require a nursing home level of care. (Exhibit J-1)
- 4) On June 13, 2018, the Facility issued a thirty-day notice to the Resident that he was being discharged from the facility, effective July 14, 2018, to his home, located in [REDACTED], or [REDACTED], or another location of his choice. (Exhibit J-1)
- 5) The notice advised that the Resident was being discharged because his health had improved sufficiently so that he no longer needs the services provided by the facility as evidenced by his independent activities of daily living and not meeting the eligibility requirements of the PAS for services in a Long-Term Care (LTC) facility. (Exhibit J-1)
- 6) On August 22, 2018, Board of Review action number 18-BOR-2033 reversed the decision by the DHHR to deny the Resident's application for LTC Medicaid based on the medical eligibility determination of the June 11, 2018 PAS, and remanded the case for completion of a new PAS and eligibility determination.

APPLICABLE POLICY

Code of Federal Regulations 42CFR §483.15(c)(1)(i)(B) provides in part:

The facility may transfer or discharge a resident when the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility.

Code of Federal Regulations 42CFR §483.12(a)(4) provides in part:

Before a facility discharges a resident, the facility must notify the resident of the discharge and reason for the move in writing and include in the notice the items described in paragraph (a)(6) of this section. [emphasis added]

Code of Federal Regulations 42CFR §483.12(a)(6)(iii) provides in part:

The written notice must include the location to which the resident is discharged.

West Virginia Code §64-43-4(13)(f)(2) provides in part:

The facility shall assist the resident in finding a reasonably appropriate alternative placement prior to the proposed discharge and develop a plan designed to minimize any transfer trauma to the resident. The plan may include counseling the resident regarding available community resources and taking steps under the facility's control to assure safe relocation.

DISCUSSION

The Resident resides at the Facility. The Facility issued a notice advising the Resident that he would be discharged from the Facility due to his health improving sufficiently so that he no longer needs the services provided by the Facility as evidenced by his independent activities of daily living (ADLs) and not meeting the eligibility requirements of the PAS to receive services in a LTC Facility. The Resident argued that he continued to require the services provided by the Facility and contended that the notice of discharge was insufficient due to no specific discharge location being identified.

The Facility has the burden of proof. To prove the Resident should be discharged from the Facility, the Facility had to prove by a preponderance of evidence that it acted according to regulations in determining that the Resident was eligible for discharge and that the Facility appropriately notified the Resident of his impending discharge. The Facility had to demonstrate that the Resident no longer required the services of the Facility as evidenced by his independent activities of daily living (ADLs) and not meeting the eligibility requirements of the PAS to receive services in a LTC facility. Evidence presented by the Facility had to verify that the Resident's discharge location was included on his notice of discharge.

Eligibility for Discharge:

During the hearing, the Facility witnesses provided testimony indicating that the Resident did not require assistance from staff to perform ADLs. The Resident argued that he continues to require nursing home level of care. No Facility documentation was provided to corroborate staff testimony that the Appellant independently performs his own ADLs. The decision to discharge the Resident from the Facility was based partly on the eligibility determination of the June 11, 2018 PAS; however, the Board of Review decision reversed the PAS LTC Medicaid eligibility determination and remanded the case for completion of a new PAS and LTC Medicaid eligibility determination.

Notice:

During the hearing, the Facility testified that multiple discharge locations were listed on the notice due to the Resident's refusal to participate in discharge planning and provide an address for his home prior to the issuance of the discharge notice. The Resident testified that he did not recall Facility attempts to meet for discharge planning. No Facility documentation was provided to corroborate that meetings regarding discharge planning had occurred or that attempts to meet had been made prior to the issuance of the discharge notice. The Resident testified that he required use of a wheelchair and his home was not equipped to accommodate a wheelchair; further, he testified that a homeless shelter would not be appropriate due to the treatment required for his medical conditions. The Resident argued that regulations require a specific discharge location to be identified on the discharge notice and that the Facility failed to meet that requirement by listing multiple discharge locations.

Pursuant to regulations, the Facility had the responsibility to assist the Resident in finding a reasonably appropriate alternative placement prior to his proposed discharge and to include the location on the notice

of discharge. Regardless of the Resident's participation in discharge planning, the Facility has the responsibility to identify a discharge location and include the specific discharge location on the notice.

Because there was no credible evidence entered to corroborate that the Resident's health had improved sufficiently so that he no longer required the services provided by the Facility, the Facility failed to prove that it acted according to regulations in determining that the Resident was eligible for discharge. Although, the Facility failed to appropriately notify the Appellant of discharge by including a discharge location as required by regulations, the issue of the notice is moot as the Facility failed to prove that the Resident was eligible for discharge.

CONCLUSIONS OF LAW

- 1) The Facility may discharge a resident when the resident's health has improved sufficiently so that the resident no longer needs the services provided by the Facility.
- 2) The June 11, 2018 PAS used by the Facility to partly determine the Resident's eligibility for discharge was reversed in Board of Review action number 18-BOR-2033.
- 3) No credible evidence was entered to corroborate that the Resident independently performed ADLs or that his health had improved sufficiently so that he no longer required the services provided by the Facility.
- 4) The Facility failed to prove that the Resident was eligible for discharge, effective July 14, 2018.
- 5) Because the Facility failed to prove that the Resident was eligible for discharge, the matter of Facility issuance of appropriate discharge notice is moot.

DECISION

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

ENTERED this 23rd day of August 2018.

Tara B. Thompson
State Hearing Officer