



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

**Bill J. Crouch
Cabinet Secretary**

**BOARD OF REVIEW
Raleigh District DHHR
407 Neville Street
Beckley, WV 25801**

**M. Katherine Lawson
Inspector General**

August 29, 2018

[REDACTED]

RE:

ACTION NO.:18-BOR-2092

Dear Ms. [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,

Kristi Logan
State Hearing Officer
Member, State Board of Review

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

cc:

[REDACTED]

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

██████████,

Resident,

v.

Action Number: 18-BOR-2092

SUMMERS COUNTY NURSING AND REHABILITATION,

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' Common Chapters Manual. This fair hearing was convened on August 22, 2018.

The matter before the Hearing Officer arises from the June 30, 2018, decision by the Facility to discharge the Resident from ██████████.

At the hearing, the Facility appeared by ██████████, Administrator. Appearing as a witness for the Facility was ██████████, Social Worker. The Resident appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 Admission Record
- F-2 Pre-Admission Screening dated August 3, 2018
- F-3 Progress Notes for July – August 2018
- F-4 Informed Refusal of Treatment dated May 11, 2018
- F-5 30-Day Notice of Discharge dated June 30, 2018
- F-6 Nursing Home Discharge Summary dated July 27, 2018
- F-7 Physical Progress Notes for July – August 2018
- F-8 Pre-Admission Screening dated May 4, 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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Resident was admitted to the Facility on May 5, 2018 (Exhibit F-1).
- 2) The May 4, 2018 Pre-Admission Screening (PAS) indicated that the Resident would be discharged in less than three (3) months (Exhibit F-8).
- 3) The Facility issued a 30-Day Notice of Discharge to the Resident on June 30, 2018, informing her that she would be discharged from the Facility on August 2, 2018, because her health had improved and she no longer met the criteria for nursing facility services (Exhibit F-5).
- 4) A Pre-Admission Screening (PAS) was completed for the Resident on August 3, 2018, when her previous PAS had expired (Exhibit F-2).
- 5) The Resident was found to have no deficits from the August 2018 PAS (Exhibit F-2).

APPLICABLE POLICY

The Code of Federal Regulations - 42 CFR §483.15(a)(2) states that the facility must permit a resident to remain in the facility, and not transfer or discharge the resident unless —

- The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility (a)(2)(i);
- The resident's health has improved sufficiently so the resident no longer needs services provided by the facility(a)(2)(ii);
- The safety of individuals in the facility is endangered (a)(2)(iii);
- The health of individuals in the facility would otherwise be endangered(a)(2)(iv);
- The resident has failed, after reasonable and appropriate notice, to pay for or have
- Medicaid and/or Medicare pay for the stay at the facility(a)(2)(v);
- The facility ceases to operate (a)(2)(vi).

42 CFR §483.15(a)(3), states when the facility transfers or discharges a resident under any of the circumstances specified above, the resident's clinical record must be documented by the resident's physician when the transfer or discharge is necessary under sections (a)(2)(i), (a)(2)(ii) or (a)(2)(iv).

DISCUSSION

Federal regulations allow for a nursing facility to involuntarily transfer or discharge a resident if such action is necessary because the resident's health has improved and no longer meets the criteria for nursing facility services.

The Resident was admitted to the Facility in May 2018 and by June 30, 2018, her health had improved and discharge proceedings were initiated at her physician's recommendation. The August 2018 PAS further documented that the Resident no longer met the medical criteria for nursing facility services.

The Resident testified that she is incontinent and uses a rollator walker to ambulate. In reviewing the medical criteria and the August 2018 PAS, the Resident conceded that she no longer met the medical criteria required to remain in the facility.

The Facility met the federal requirements for an involuntary discharge of the Resident.

CONCLUSIONS OF LAW

- 1) Federal regulations stipulate that a resident of a nursing facility may be discharged if the resident's health has improved and no longer meets the medical criteria for nursing facility services.
- 2) The Resident no longer met the medical criteria to continue receiving nursing facility services.
- 3) The proposed discharge of the Resident was appropriate.

DECISION

It is the decision of the State Hearing Officer to **uphold** the proposed discharge of the Resident from [REDACTED].

ENTERED this 29th day of August 2018

**Kristi Logan
State Hearing Officer**