



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

Bill J. Crouch
Cabinet Secretary

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

Jolynn Marra
Interim Inspector General

December 11, 2018

[REDACTED]

RE: [REDACTED] v. [REDACTED]
ACTION NO.: 18-BOR-2713

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], [REDACTED]

WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BOARD OF REVIEW

██████████,

Resident,

v.

Action Number: 18-BOR-2713

██████████,

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 December 4, 2018.

The matter before the Hearing Officer arises from the October 9, 2018, decision by the Facility to discharge the Resident from ██████████.

At the hearing, the Facility appeared by ██████████, Administrator. Appearing as witnesses for the Facility were ██████████, Director of Social Services and ██████████, Director of Nursing. The Resident appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 Progress Notes Report from December 2017 through November 2018
- F-2 Outline of Discharge Meeting dated October 17, 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 lives at ██████████ long-term care facility.

- 2) The Resident has a history of hiding her medications and not taking them as prescribed (Exhibit F-1).
- 3) In January 2018, several pills were found in the Resident's drawer and her physician ordered that her medications be crushed and administered with food.
- 4) In May 2018, the physician rescinded the order to crush the Resident's medications at the Resident's request.
- 5) In September 2018, pills were found hidden in the Resident's drawer and facility staff discussed possible discharge from the facility if the behavior continued (Exhibit F-1).
- 6) On October 5, 2018, pills were found hidden in the Resident's drawer and her physician ordered her medications be crushed and administered with food (Exhibit F-1).
- 7) The Facility issued a 30-Day Discharge Notice to the Resident on October 9, 2018, indicating in the Notice that the reason for discharge was because the health and safety to other individuals in the facility was endangered.
- 8) On October 17, 2018, a meeting regarding the pending discharge was held with the Resident and facility staff, and the Resident agreed to stop hiding medications. The issue would be revisited on November 2, 2018 (Exhibit F-2).
- 9) On November 2, 2018, pills were found in the Resident's purse and the Facility decided to proceed with discharge of the Resident (Exhibit F-1).

APPLICABLE POLICY

Code of Federal Regulations 42 CFR §483.15(c)(1)(i) states the facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

- (A) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (B) 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;
- (C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility;
- (F) The facility ceases to operate.

42 CFR §483.15(c)(2) states that when the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (c)(1)(i)(A) through (F) of this section, the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate

information is communicated to the receiving health care institution or provider. Documentation in the resident's medical record must include:

- (A) The basis for the transfer per paragraph (c)(1)(i) of this section.
- (B) In the case of paragraph (c)(1)(i)(A) of this section, the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).

- (ii) The documentation required by paragraph (c)(2)(i) of this section must be made by—
 - (A) The resident's physician when transfer or discharge is necessary under paragraph (c)(1)(A) or (B) of this section; and
 - (B) A physician when transfer or discharge is necessary under paragraph (c)(1)(i)(C) or (D) of this section.

42 CFR §483.15(c)(3) states that before a facility transfers or discharges a resident, the facility must—

- (i) Notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman
- (ii) Record the reasons for the transfer or discharge in the resident's medical record in accordance with paragraph (c)(2) of this section; and
- (iii) Include in the notice the items described in paragraph (c)(5) of this section.

42 CFR §483.15(c)(4) states that (i) except as specified in paragraphs (c)(4)(ii) and (8) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged. (ii) Notice must be made as soon as practicable before transfer or discharge when—

- (A) The safety of individuals in the facility would be endangered under paragraph (c)(1)(i)(C) of this section;
- (B) The health of individuals in the facility would be endangered, under paragraph (c)(1)(i)(D) of this section;
- (C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (c)(1)(i)(B) of this section;
- (D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (c)(1)(i)(A) of this section; or
- (E) A resident has not resided in the facility for 30 days.

42 CFR §483.15(c)(5) states that the written notice specified in paragraph (c)(3) of this section 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 of the resident's appeal rights, including the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;
- (v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman.

DISCUSSION

Federal regulations allow for nursing facilities to involuntarily transfer or discharge a resident if such action is necessary because the health and safety of individuals in the facility would be endangered. The resident's physician must document in the resident's medical record when a transfer or discharge is necessary under these circumstances.

The Facility contended that the Resident's continued actions of hiding her prescribed medication not only posed a risk to her own health and safety, but to the health and safety of other individuals in the facility who could acquire those medications.

The Resident testified that she hid her pain medications to take throughout the night when she needed them, and the pain she experienced overwhelmed her logic to obey the Facility's rules. The Resident contended that the pills found in her purse in November were pills that she had hidden months previously, and had forgotten that she had.

Federal regulations require that if a transfer or discharge is necessary because the health and safety of other individuals is endangered, documentation of the reason must be made in the resident's medical record by the attending physician. No such documentation was provided indicating that the Resident's physician recommended a transfer or discharge because the health and safety of other individuals in the facility would be endangered.

CONCLUSIONS OF LAW

- 1) Federal regulations allow for an involuntarily discharge or transfer of a resident if the health and safety of other individuals would be endangered.
- 2) Federal regulations mandate documentation by the Resident's physician be made in the resident's medical record documenting that the health of other individuals would be endangered.
- 3) The Facility failed to present documentation from the Resident's physician that the health and safety of individuals in the facility would be endangered.
- 4) Because the Facility has not complied with the regulatory requirement of documentation in the medical record by the Resident's physician, the Facility's proposed action to proceed with the involuntary transfer or discharge of the Resident cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to **reverse** the proposal of [REDACTED] to discharge the Resident.

ENTERED this 11th day of December 2018.

**Kristi Logan
State Hearing Officer**