



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

**Jim Justice
Governor**

**BOARD OF REVIEW
416 Adams St.
Suite 307
Fairmont, WV 26554
304-368-4420 ext. 79326**

**Bill J. Crouch
Cabinet Secretary**

January 11, 2018

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 17-BOR-2926

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 (DHHR). 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: Appellant's Recourse to Hearing Decision
Form IG-BR-29

cc: [REDACTED], [REDACTED]
[REDACTED], Appellant's relative

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

██████████,

Resident,

v.

ACTION NO.:17-BOR-2926

GENESIS TYGART CENTER NURSING HOME,

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 21, 2017, on an appeal filed December 6, 2017.

The matter before the Hearing Officer arises from the November 8, 2017 decision by the Facility to discharge the Resident from the Facility.

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

EXHIBITS

Facility's Exhibits:

- F-1 Notice of Involuntary Discharge, dated November 8, 2017
- F-2 Pre-Admission Screening, dated November 1, 2017; Notice of Denial for Long-Term Care, dated November 2, 2017; and Progress Note, dated October 26, 2017
- F-3 Facility Activity of Daily Living (ADL) Records, dated October 2017
- F-4 Facility ADL Assistance documentation, dated September 22, 2017
- F-5 Facility Progress Notes, dated October 9, 2015 through December 13, 2017

Resident's Exhibits:

None

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) On June 6, 2015, the Resident was admitted to the Facility. (Exhibit F-4)
- 2) On November 1, 2017, a Pre-Admission Screening (PAS) was completed to determine the Resident's continued eligibility for nursing home level of care. (Exhibit F-2)
- 3) On November 2, 2017, a notice was issued to the Resident advising him that his request for Long-Term Care (LTC) Medicaid had been denied. (Exhibit F-2)
- 4) On November 8, 2017, the Facility issued a thirty-day notice to the Resident that he was being discharged from the facility, effective December 8, 2017. The notice advised the Resident was being discharged because the November 1, 2017 PAS indicated no services were needed and his health had improved sufficiently so that he no longer required the services provided by the Facility. (Exhibit F-1)
- 5) Board of Review action number 17-BOR-2837 reversed the decision by the West Virginia Department of Health and Human Resources (WVDHHR) to deny the Resident's application for LTC Medicaid based on the medical eligibility determination of the November 1, 2017 PAS, and remanded for completion of a new PAS and eligibility determination.
- 6) The Facility's reason to discharge the Resident based on the November 1, 2017 PAS was rendered invalid by the Board of Review decision to reverse the PAS determination.

APPLICABLE POLICY

Federal Regulations:

Code of Federal Regulations 42CFR §483.15(c)(1)(i)(B) Facility Requirements 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.

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 the November 1, 2017 Pre-Admission Screening (PAS) indication that no services were needed and the Resident's health had improved sufficiently so the resident no longer needed the services provided by the Facility. The Appellant contended that he should not be discharged because the PAS assessment did not accurately reflect his functional abilities and limitations.

The Facility has the burden of proof. To prove the Resident should be discharged from the Facility, the Facility had to demonstrate by a preponderance of evidence that it acted according to regulations in determining that the Resident was eligible for discharge. During the hearing, the Facility argued that Resident's health had improved sufficiently and discharged the Resident based on the November 1, 2017 PAS determination that the Resident did not possess the five (5) functional deficits required by Medicaid to be eligible for Long-Term Care admission. The basis for the Facility's discharge was rendered invalid by the Board of Review decision to reverse the November 1, 2017 PAS determination in action number 17-BOR-2837. Because the November 1, 2017 PAS determination was reversed, the basis for the Facility's decision to discharge the Resident is invalid.

CONCLUSIONS OF LAW

- 1) The Facility based its reason for discharging the Resident on the November 1, 2017 Pre-Admission Screening determination that the Resident was ineligible for Long-Term Care admission.
- 2) The November 1, 2017 Pre-Admission Screening determination was reversed in Board of Review action number 17-BOR-2837.
- 3) The basis for discharging the Resident because the Resident's health had improved sufficiently so that the Resident no longer needed the services provided by the Facility, was not established.

DECISION

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

ENTERED this 11th day of January 2018.

Tara B. Thompson
State Hearing Officer