



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

**Bill J. Crouch
Cabinet Secretary**

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

**Jolynn Marra
Inspector General**

March 29, 2022

[REDACTED]

RE: [REDACTED] v. WV DHHR
ACTION NO.: 22-BOR-1112

Dear [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
Certified State Hearing Officer
Member, State Board of Review

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

cc: [REDACTED] Administrator
[REDACTED] Social Worker

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

██████████,

Resident,

v.

Action Number: 22-BOR-1112

MERCER NURSING AND REHABILITATION 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' Common Chapters Manual. This fair hearing was convened on March 22, 2022, on an appeal filed January 18, 2022.

The matter before the Hearing Officer arises from the December 20, 2021, and January 6, 2022, decisions by the Facility to discharge the Resident from ██████████ Nursing and Rehabilitation Center.

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

Facility's Exhibits:

None

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 Hearing Officer sets forth the following Findings of Fact.

FINDINGS OF FACT

- 1) The Resident was admitted to [REDACTED] Nursing and Rehabilitation Center (hereinafter Facility) on August 2, 2021.
- 2) The Resident is the payee of his Social Security income.
- 3) The Resident receives Long-Term Care Medicaid benefits and was responsible to pay \$1,472.50 each month to the Facility towards his cost of care.
- 4) The Resident has not made any payments to the Facility since his date of admission.
- 5) The Facility has made several attempts to collect payment from the Resident or agree to a payment arrangement.
- 6) On December 20, 2021, the Facility issued a 30-Day Notice of Discharge to the Resident advising that he would be discharged on January 19, 2022, to his residence due to non-payment.
- 7) On January 6, 2022, the Facility issued a 30-Day Notice of Discharge to the Resident advising that he would be discharged on February 5, 2022, to his residence due a violation of the Facility's policies and rules.
- 8) The Resident contested the proposed discharge from the Facility.

APPLICABLE POLICY

Code of Federal Regulation Title 42 §483.15 provide that the nursing facility administrator or designee must permit each resident to remain in the facility, and not be transferred or discharged from the facility unless one of the following conditions is met:

(1) Facility requirements

(i) 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. 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. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or
- (F) The facility ceases to operate.

(ii) The facility may not transfer or discharge the resident while the appeal is pending, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

(2) Documentation. 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.

(i) 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.

(iii) Information provided to the receiving provider must include a minimum of the following:

- (A) Contact information of the practitioner responsible for the care of the resident
- (B) Resident representative information including contact information.
- (C) Advance Directive information.
- (D) All special instructions or precautions for ongoing care, as appropriate.
- (E) Comprehensive care plan goals,
- (F) All other necessary information, including a copy of the resident's discharge summary, consistent with § 483.21(c)(2), as applicable, and any other documentation, as applicable, to ensure a safe and effective transition of care.

(3) Notice before transfer. 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.

(4) Timing of the notice.

(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.

(5) Contents of the notice. 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;

(vi) For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402, codified at 42 U.S.C. 15001 et seq.); and

(vii) For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act.

(6) Changes to the notice. If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available.

(7) Orientation for transfer or discharge. A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.

(8) Notice in advance of facility closure. In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the Office of the State Long-Term Care Ombudsman, residents of the facility, and the resident representatives, as well as the plan for the transfer and adequate relocation of the residents.

(9) Room changes in a composite distinct part. Room changes in a facility that is a composite distinct part (as defined in § 483.5) are subject to the requirements of § 483.10(e)(7) and must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.

DISCUSSION

Federal regulations permit the involuntary discharge of an individual if the individual has failed, after reasonable and appropriate notice, to pay for a stay at a nursing facility.

██████████, representative for the Facility, testified that the Resident has failed to make any payments for his cost of care. ██████████ stated several collection letters have been sent to the Resident and his family advising of his past due balance, and the Facility has offered to set up a payment plan in an attempt satisfy his debt, with no response from the Resident or his family members.

██████████ stated the second notice of discharge issued in January 2022 was due to the Resident's violation of the Facility's policies. ██████████ alleged that a nurse administered a narcotic to the Resident, left his room and upon returning, found that the Resident has crushed the narcotic and was snorting it through a straw. ██████████ stated they obtained permission from the Resident's physician to crush this medication and administer with applesauce after this incident.

The Resident adamantly denied the allegation of snorting a medication while at the Facility, testifying that incident never happened. The Resident contended that he was unaware that he owed the Facility money, stating that he thought it was being taken care of by Medicare and Medicaid. The Resident admitted that his adult daughter was residing his home in the community and was using his Social Security income to pay the household bills.

The Facility failed to produce any evidence supporting the accusation that the Resident snorted his medication, either through medical records or testimony from the nurse who witnessed the alleged event. Furthermore, the Facility failed to prove that a violation of its policies met the federal requirements for an involuntary discharge. However, there is no dispute that the Resident has failed to pay his contribution to the Facility for his cost of care. The Resident gave conflicting testimony, initially denying that he was aware of an unpaid balance and an obligation to pay a portion of his income to the Facility, then acknowledging that the discharge for non-payment was legitimate.

Whereas the preponderance of evidence showed that the Facility followed federal regulations in the proposed discharge of the Resident from its facility due to non-payment, the proposed discharge of the Resident is affirmed.

CONCLUSIONS OF LAW

- 1) Federal regulations permit the involuntary discharge of an individual if the individual has failed, after reasonable and appropriate notice, to pay for a stay at a nursing facility.
- 2) The Resident owes an outstanding balance of \$10,404 to the Facility.
- 3) The Facility notified the Resident and his family members several times of his outstanding balance.
- 4) The Facility followed federal regulations in the proposed discharge of the Resident.

DECISION

It is the decision of the State Hearing Officer to **uphold** the decision of [REDACTED] Nursing and Rehabilitation Center to discharge the Resident from its facility due to non-payment.

ENTERED this 29th day of March 2022.

Kristi Logan
Certified State Hearing Officer