



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW
433 MidAtlantic Parkway
Martinsburg, WV 25404
Telephone: (304) 352-0805 Fax: (304) 558-1992

Bill J. Crouch
Cabinet Secretary

Jolynn Marra
Inspector General

June 2, 2022

[REDACTED]

RE: [REDACTED] v. [REDACTED] HEALTHCARE CENTER
ACTION NO.: 22-BOR-1658

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,

Lori Woodward, J.D.
Certified State Hearing Officer
Member, State Board of Review

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

cc: [REDACTED], Administrator, [REDACTED] Healthcare Center

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

IN RE: [REDACTED],

Resident,

v.

BOR Action #22-BOR-1658

[REDACTED] **HEALTHCARE CENTER**

Facility.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for [REDACTED]. 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 June 14, 2022, on an appeal filed May 17, 2022.

The matter before the Hearing Officer arises from the April 21, 2022 decision by the Facility to propose an involuntary discharge of the Resident for non-payment.

At the hearing, the Facility appeared by [REDACTED], Executive Director. Appearing as witnesses for the Facility were [REDACTED], Business Officer Manager and [REDACTED], Director of Social Services. The Resident appeared *pro se*. All witnesses were placed under oath and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 WV Department of Health and Human Resources (WV DHHR) Verification request (DFA-6) dated November 21, 2021; Copy of [REDACTED] checking account (*0251) statement from July 24, 2021 – August 22, 2021; Copy of [REDACTED] online account (*4052) statement from July 24, 2021 – August 22, 2021; Copy of [REDACTED] statement savings (*1428) from July 16, 2021 – November 16, 2021; [REDACTED] account (*4257) statement from August 3, 2021 - September 3, 2021
- F-2 Electronic mail exchanges from October 25, 2021 and December 8, 2021 between the Resident, [REDACTED], and [REDACTED]
- F-3 30-Day Notice of Discharge dated April 21, 2022; Payment Due as of April 21, 2022
- F-4 [REDACTED] Activity Report, from 2021 to 2022

Resident's Exhibits:

- R-1 Electronic mail exchanges dated November 22, November 24 and December 8, 2021 between Tracey Grassi (WV DHHR) and Resident; Good Faith Payments to [REDACTED]; Copies of Receipts dated September 27, 2021, October 19, 2021, November 17, 2021, and January 5, 2022

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] (Facility) in [REDACTED] on March 19, 2021. (*See*, Decision of State Hearing Officer, [REDACTED] v. West Virginia Department of Health and Human Resources, BOR Action #21-BOR-2102, entered October 29, 2021, hereinafter referred to as “#21-BOR-2102”)
- 2) In August 2021, the Facility presented the Resident with a 30-Day Notice of Discharge based on non-payment which was appealed by the Resident, and a decision was rendered in #21-BOR-2102 affirming the Facility’s decision.
- 3) The Resident remained at the Facility and on April 21, 2022, the Facility presented the Resident with a 30-Day Notice of Discharge (hereinafter referred to as “Notice”) with a proposed transfer date of May 22, 2022, citing the basis of the discharge as failure to pay for her stay at the Facility. (Exhibit F-3)
- 4) The Notice proposed that the Resident be transferred to [REDACTED] or the Facility would assist the Resident to find an appropriate alternative placement. (Exhibit F-3)
- 5) Preferring to find a suitable facility on her own, the Resident refused to be transferred to [REDACTED] or to meet with the Facility’s staff to find another suitable facility for transfer.
- 6) It is uncontested that as of April 21, 2022, the Resident had an outstanding balance due to the Facility of \$95,429.50. (Exhibit F-3)
- 7) The Resident has made payments to the Facility as follows: October 2, 2021 of \$13,578; October 19, 2021 of \$2,263; November 17, 2021 of \$2,263; and January 5, 2022 of \$2,270. (Exhibit R-1)
- 8) The Resident applied for Long-Term Care (LTC) Medicaid on or about November 1, 2022.
- 9) As part of the financial eligibility review of the Resident’s application for LTC Medicaid, she returned information regarding her assets showing she was over the asset limit during the months of August, September, and October, 2021. (Exhibit R-1)
- 10) The Resident did not appeal the financial eligibility denial for her LTC Medicaid application.

- 11) As part of the medical eligibility review of the Resident's application for LTC Medicaid, a Pre-Admission Screening (PAS) was submitted which showed she did not meet the medical eligibility for LTC Medicaid.
- 12) The Resident appealed the medical eligibility denial for LTC Medicaid. The hearing was held, and the decision was reversed on June 14, 2022. (See, Decision of State Hearing Officer, [REDACTED] v. West Virginia Department of Health and Human Resources, BOR Action #22-BOR-1571, entered June 14, 2022)
- 13) The Resident has not re-applied for LTC Medicaid as of the date of this hearing.

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 allow a facility to involuntarily discharge an individual if the individual has failed, after reasonable and appropriate notice, to pay for staying at the nursing facility. The Facility must show by a preponderance of evidence that it followed all federal regulations in its proposed discharge of the Resident.

Background

The Resident was initially admitted to the Facility on March 19, 2021. On August 24, 2021, the Facility presented the Resident with a 30-Day Notice of Discharge (Notice) based upon the non-payment of the Resident's outstanding balance. The Resident appealed the proposed discharge, a hearing was held on the issue, and the Facility's decision was upheld on October 29, 2021. (*See*, #21-BOR-2102)

Long-Term Care Medicaid Application, Financial Eligibility

The Resident remained at the Facility and made an application for LTC Medicaid in November 2021. The Resident was found to be over the asset limit for LTC Medicaid financial eligibility for the months of August, September and October 2021, and was instructed to reapply for consideration of coverage beginning November 2021. There was no evidence presented nor did the Resident aver that she appealed the financial Medicaid denial or reapply for Medicaid as of the date of this hearing.

Long-Term Care Medicaid Application, Medical Eligibility

As part of the review for LTC Medicaid eligibility, the Resident was required to have a Pre-Admission Screening (PAS) submitted. The Resident was determined to be medically ineligible for LTC Medicaid as she did not meet the required five substantial deficits required by policy. The Resident appealed this decision. A hearing was held on June 8, 2022 wherein the Department of Health and Human Resources, Bureau for Medical Services, conceded that the Resident did indeed meet medical eligibility. The denial based on medical eligibility was reversed and entered on June 14, 2022. (*See*, Decision of State Hearing Officer, [REDACTED] v. West Virginia Department of Health and Human Resources, BOR Action #22-BOR-1571, entered June 14, 2022)

April 21, 2022 30-Day Notice of Discharge

On April 21, 2022, the Facility presented the Resident with a 30-Day Notice of Discharge with a proposed discharge date of May 22, 2022, due to the non-payment to the Facility for her stay. As of the date of the Notice the Resident's outstanding balance was \$95,429.50. The Resident did not contest the amount. The Resident has made the following payments on her outstanding balance:

- October 2, 2021 of \$13,578
- October 19, 2021 of \$2,263
- November 17, 2021 of \$2,263
- January 5, 2022 of \$2,270

No other payments have been made by the Resident towards her outstanding balance for her facility stay. The Resident does not contest the outstanding balance but stated that she refused to make any additional payments as she believed that her payments were being intentionally withheld. Although the Resident presented a self-made chart purporting to show that the Facility intentionally withheld her payments, the chart was not probative. Nonetheless, a delay in the processing of payments does not relieve an individual from the responsibility of payment.

The April 21, 2022 Notice listed the [REDACTED] as the proposed transfer facility. However, the Resident refuses to be transferred to the [REDACTED] and refuses to meet with the Facility staff to find a suitable alternative. Instead, the Resident testified that she has already contacted some suitable facilities for transfer.

The Facility has been making attempts for over a year to collect payment from the Resident for her facility stay with limited success. The Notice included the statutory requirements of a proposed transfer date, place of transfer, appeal rights, and names and contact information for other agencies, including the Office of the Ombudsman. It must be noted that the March 15, 2022 admission date on the Notice reflected a re-admission after an overnight hospital stay, per policy.

The Facility showed by a preponderance of evidence that it acted in accordance with statutory regulations in its proposed discharge after making several attempts in assisting the Resident with making payment on the outstanding and accumulating account balances. Whereas, the Resident has failed to pay the outstanding balance for her facility stay after appropriate notice, the Facility's proposed discharge of the Resident is affirmed.

CONCLUSIONS OF LAW

- 1) Federal statutory regulations allow a facility to initiate involuntary transfer/discharge proceedings against a resident if, after reasonable and appropriate notice, the resident fails to pay for a stay at the nursing home.
- 2) The Resident received reasonable and appropriate notice that payment to the Facility for her cost of care was required.
- 3) The April 21, 2022 30-Day Notice of Discharge met statutory regulations.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Facility's proposal to transfer/discharge the Resident.

ENTERED this 22nd day of June 2022.

Lori Woodward, Certified State Hearing Officer