



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

Bill J. Crouch
Cabinet Secretary

Board of Review
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Jolynn Marra
Inspector General

October 17, 2022

[REDACTED]

RE: [REDACTED] v. WVDHHR
ACTION NO.: 22-BOR-1957

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 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. 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, MLS
State Hearing Officer
State Board of Review

Enclosure: Resident's Recourse
Form IG-BR-29

CC: [REDACTED]

[REDACTED]

V.

INTRODUCTION

2

FINDINGS OF FACT

- 1) The Resident resides at the Facility.
- 2) On July 12, 2022, the Facility notified the Resident he was being involuntarily transferred to [REDACTED], effective August 11, 2022, because "the transfer or discharge is appropriate because the [Resident's] health has improved sufficiently that [he] no longer needs the services provided by this facility."
- 3) The July 12, 2022 notice reflected incorrect contact information for the Board of Review.
- 4) On October 14, 2022, a final decision in Board of Review Action No.: 22-BOR-1958 was issued upholding the DHHR's decision to deny the Resident medical eligibility for the Medicaid Long-Term Care program.

APPLICABLE POLICY

Code of Federal Regulations 42 CFR §§ 483.202 and 483.5 provide in pertinent parts:

Discharge means movement from an entity that participates in Medicare or Medicaid as a skilled nursing facility to a non institutional setting when the discharging facility ceases to be legally responsible for the care of the resident.

Transfer means movement from an entity that participates in Medicare or Medicaid as a skilled nursing facility to another institutional setting when the legal responsibility for the care of the resident changes from the transferring facility to the receiving facility.

Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

42 CFR § 483.10(f)(10) provides in pertinent parts:

The resident has a right to manage his financial affairs. This includes the right to know, in advance, what charges a facility may impose against a resident's personal funds.

42 CFR §§ 483.15(c)(1)(i)(B) and 483.15(c)(1)(i)(E) provide in pertinent parts:

The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

- 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;
- the resident has failed after reasonable and appropriate notice, to pay for (or

have paid under Medicare or Medicaid) a stay at the facility.

42 CFR § 483.15(c)(2) provides in pertinent part:

When the facility transfers or discharges a resident pursuant to §483.15(c)(1)(i)(A) through (F), the facility must ensure that the transfer or discharge is documented in the resident's medical record. The basis for the resident's transfer or discharge must be documented in the resident's record by the resident's physician when transfer or discharge is necessary under §483.15(c)(1)(i)(B).

42 CFR §§ 483.10(g)(4)(vi) and 483.15(c)(3)(i)-(iii) provide in pertinent parts:

The resident has the right to receive notices orally (meaning spoken) and in writing (including Braille) in a format and a language he understands, including information and contact information for filing grievances or complaints.

Before a facility transfers or discharges a resident, the facility must:

- Notify the resident of the transfer and the reasons for the move in writing and in language and manner they understand.
- Record the reasons for the transfer or discharge in the resident's medical record in accordance with paragraph (c)(2) of this section; and
- Include in the notice the items described in paragraph (c)(5) of this section.

42 CFR § 483.15(c)(5) provides in pertinent part:

The written notice must include the reason for transfer or discharge, the effective date of transfer or discharge, the location to which the resident is transferred or discharged, information regarding the resident's appeal rights — including the name, address, and telephone number of the entity which receives such requests.

42 CFR § 483.118 (b)(1) provides in pertinent parts:

For residents who require neither Nursing Facility (NF) services nor specialized services for MI or IID, the State must arrange for the safe and orderly discharge of the resident from the facility in accordance with § 483.15(b); and prepare and orient the resident for discharge.

West Virginia Code § 64-13-4(6)(b) provides in pertinent parts:

In the event of an involuntary transfer, the nursing home shall assist the resident in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge and by developing a plan designed to minimize any transfer trauma to the resident. The plan may include counseling the resident regarding available community resources and taking steps under the nursing home's control to assure safe relocation.

DISCUSSION

The Facility initiated an involuntary discharge of the Resident because the Resident's health had sufficiently improved as to no longer require the services of the Facility. The Resident contested his discharge from the Facility to [REDACTED].

Resident's Improved Health

The Facility bears the burden of proof. The Facility had to demonstrate by a preponderance of the evidence that the Resident's health had improved sufficiently such that the Resident no longer needed the services provided by the Facility. The Facility's witnesses testified that the Resident's July 7, 2022 Pre-Admission Screening (PAS) indicated he no longer required skilled nursing services.

During the hearing, the Resident testified that his denial for Medicaid Long-Term Care admission — that the Facility's discharge was based on — was pending appeal with the Board of Review. On October 14, 2022, a final decision in Board of Review Action No.: 22-BOR-1958 was issued upholding the DHHR's decision to deny the Resident eligibility for the Medicaid Long-Term Care program.

Even though the Board of Review record affirms that the Resident's July 7, 2022 Medicaid Long-Term Care denial was correct, a denial of medical eligibility for the Medicaid Long-Term Care program is not sufficient to demonstrate that the Resident's health had improved such that he no longer requires the services provided by the Facility. When a transfer or discharge from the Facility is necessary due to improved health, regulations require that the basis for discharge be documented by the Facility's physician and recorded in the Resident's record. No evidence was submitted to establish that this regulatory requirement was met. Further, no evidence was submitted to indicate how the Resident's health had improved or what the Resident's medical needs were at the time the Facility initiated his discharge.

Insufficient Notice

Even if the Facility had proven by a preponderance of the evidence that the Resident's health had improved sufficiently to be eligible for discharge, the Facility's July 12, 2022 notice of discharge failed to meet multiple regulatory requirements.

The notice of discharge must specify the action being taken and the reason for the transfer or discharge. The Facility argued that discharge was appropriate for the Resident. However, the notice indicated an effective date of transfer and referred to a destination of transfer, not of discharge. The Facility failed to properly notice the Resident of the action being taken.

In addition to the incorrect language regarding transferring rather than discharge, the Facility's notice reflected incorrect contact information for the Board of Review. The Facility is required to reflect accurate Board of Review contact information to ensure the Resident is able to exercise his right to file an appeal. The notice reflected outdated contact information for the Board of Review.

Unpaid Balance

During the hearing, the Facility's witness testified the Resident's unpaid fees were a secondary reason for the Resident's discharge. Regulations require that the Facility include the reason for the Resident's discharge on the Facility's discharge notice. The Resident's testimony was primarily regarding Facility charges. No evidence was entered to verify that the Resident had been notified in advance of charges the Facility may impose against his personal funds. As unpaid fees were not the reason reflected on the notice for the Resident's discharge from the Facility, testimony regarding unpaid fees was given little weight in the decision of this Hearing Officer.

Even if the evidence had reflected the Resident had been properly notified of unpaid charges being the basis of his discharge, the evidence submitted failed to support this basis for discharge. The Facility bears the burden of proof and had to demonstrate by a preponderance of the evidence that the Resident has failed after reasonable and appropriate notice, to pay for (or have paid under Medicare or Medicaid) a stay at the Facility. The parties provided vague testimony regarding balances owed by the Resident to the Facility.

No corroborating records were submitted to verify that the Facility acted according to the regulations to notify the Resident of a balance owed or what efforts were made to obtain payment from the Resident. The evidence established that the Resident was not properly notified of discharge based on unpaid balance. The Facility's decision to discharge the Resident based on an unpaid balance cannot be affirmed.

Discharge Location:

Because the Facility failed to prove that the action to discharge the Resident was correct, the issue of discharge location is moot. However, during the hearing, the Resident agreed that the issue he was contesting was the Facility's decision to discharge him to [REDACTED]. During the hearing, the Facility's witness testified that the Facility has made assistance locating other discharge locations available to the Resident.

The Facility is required to take steps under its control to assist the Resident with finding a reasonably appropriate alternative placement before the Resident's discharge. The evidence did not establish that the Facility met its responsibility to identify a reasonably appropriate discharge location.

CONCLUSIONS OF LAW

- 1) A Resident may be discharged from the Facility when the Resident has failed after reasonable and appropriate notice, to pay for (or have paid under Medicare or Medicaid) a stay at the Facility.

- 2) The preponderance of evidence failed to prove that the Resident received reasonable and appropriate notice of amounts owed to pay for the Resident's stay at the Facility.
- 3) The preponderance of evidence failed to prove that the Resident failed to pay for (or have paid under Medicare or Medicaid) a stay at the Facility.
- 4) A Resident may be discharged from the Facility when the Resident's health has sufficiently improved such that he no longer requires the services provided by the Facility and when the reason for the Resident's discharge is documented by the Resident's physician in the Resident's medical record.
- 5) The preponderance of evidence failed to verify that the Resident's health had improved sufficiently that he no longer requires the services provided by the Facility.
- 6) The preponderance of evidence failed to verify that the reason for the Resident's discharge was documented by the Resident's physician in the Resident's medical record.
- 7) The Facility incorrectly acted to discharge the Resident, effective August 11, 2022.
- 8) Because the Facility's discharge of the Resident cannot be affirmed, the issues of improper notice and discharge location are moot.

DECISION

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

ENTERED this 17th day of October 2022..

Tara B. Thompson, MLS
State Hearing Officer