



**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**

October 6, 2022

[REDACTED]

RE: [REDACTED] v. [REDACTED]
ACTION NO.: 22-BOR-2035

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]

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

IN RE: [REDACTED],

Resident,

v.

BOR Action #22-BOR-2035

[REDACTED]

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 September 27, 2022, on an appeal filed August 25, 2022.

The matter before the Hearing Officer arises from the August 4, 2022 decision by the Facility to propose an involuntary discharge of the Resident for non-payment.

At the hearing, the Facility appeared by [REDACTED], Business Office Manager. Appearing as a witness for the Facility was [REDACTED], Social Services. The Resident was represented by [REDACTED], WV DHHR Adult Protective Services (APS). Appearing as a witness for the Resident was [REDACTED], WV DHHR APS worker. All witnesses were placed under oath and the following documents were admitted into evidence.

Facility's Exhibits:

F-1 [REDACTED] account notes; Letter dated July 18, 2022 to [REDACTED] from [REDACTED]; Letter June 20, 2022 to [REDACTED] from [REDACTED]; June 1, 2022 Statement of balance; July 1, 2022 Statement of balance; August 1, 2022 Statement of balance; July 1, 2022 Statement of balance; August 1, 2022 Statement of balance; September 1, 2022 Statement of balance; August 1, 2022 Statement of balance; September 1, 2022 Statement of balance; August 1, 2022 Statement of balance

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] (Facility) on May 11, 2022. (Exhibit F-1)
- 2) The WV DHHR is the Resident's healthcare advocate.
- 3) The Resident receives Social Security Administration (SSA) benefits.
- 4) The Resident's daughter also receives SSA benefits.
- 5) The Resident is the payee for her daughter and receives both benefits on the same card.
- 6) The Resident's daughter is in possession of the SSA benefit card and refuses to release the Resident's portion.
- 7) The Facility has applied to become the SSA benefit payee for the Resident.
- 8) SSA has recently frozen the Resident's SSA benefit payments.
- 9) The Resident receives WV Medicaid which pays a portion of her stay at the Facility.
- 10) The Resident has been unable to pay her contribution towards her stay at the Facility.
- 11) It is uncontested that the Resident has an outstanding balance due to the Facility of \$13,474.16 as of the date of the hearing. (Exhibit F-1)
- 12) On August 4, 2022, the Facility presented a Transfer or Discharge Notice for nonpayment for her Facility stay.

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 Resident was initially admitted to the Facility on May 11, 2022. On August 4, 2022, the Facility presented the Resident with a Transfer or Discharge Notice (Notice) based upon the non-payment of the Resident's outstanding balance. The WV DHHR who is the Resident's healthcare advocate appealed the proposed discharge. The Facility must show by a preponderance of evidence that it followed all federal regulations in its proposed discharge of the Resident.

The Resident receives WV Medicaid benefits which pays a portion of her stay at the Facility. The Resident is responsible to pay the portion WV Medicaid does not cover. The Resident receives SSA benefits along with her daughter. The Resident is the daughter's payee and they both receive their SSA benefits on same benefit card. The daughter is in possession of the benefit card and refuses to release the Resident's portion. The Facility contacted SSA and is in the process of becoming the payee for the Resident's SSA benefits. Although the SSA has not designated the Facility as the Resident's SSA benefit payee, it has frozen her benefits. The Resident does have an uncontested balance due to the Facility as of the hearing of \$13,474.16.

The testimony showed that there is no plan in place for the transfer of the Resident to another facility. The Facility witness testified that there has been no referral to another nursing facility. The testimony also showed that because the Facility requested to become the payee for the Resident's SSA benefits, the benefits were frozen by the SSA, making it difficult to find an appropriate transfer facility. There is no clear plan of a transfer location as required under Federal regulations. This is evident in the Notice which all the boxes checked under "Location of Discharge" and a handwritten statement, "any appropriate option".

Because of the above, the Facility's proposed involuntary discharge of the Resident is not found to have met Federal regulations and, therefore, cannot be affirmed.

CONCLUSIONS OF LAW

The Facility's August 4, 2022 Transfer or Discharge Notice did not meet statutory regulations in determining an appropriate transfer location for the Resident.

DECISION

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

ENTERED this 6th day of October 2022

Lori Woodward, Certified State Hearing Officer