



**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**

**Sheila Lee
Interim Inspector General**

November 29, 2022



RE: [REDACTED] v. [REDACTED]
ACTION NO.: 22-BOR-2347

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]

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

[REDACTED]

Resident,

v.

Action Number: 22-BOR-2347

[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 November 16, 2022, on an appeal filed October 25, 2022.

The matter before the Hearing Officer arises from the October 3, 2022, decision by [REDACTED] to discharge the Resident from its facility.

At the hearing, the Facility appeared by [REDACTED], Administrator. Appearing as witnesses for the Facility were [REDACTED], Business Manager and [REDACTED], Social Worker. The Resident was self-represented. The witnesses were sworn in, and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 Board of Review Scheduling Order dated October 26, 2022
- F-2 Account Statements dated April, May, June, July, August, September, October and November 2022
- F-3 Transaction Report from March 15 through December 31, 2022
- F-4 Notices of Past Due Balance dated July 11, August 4, and September 12, 2022

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] on March 15, 2022.
- 2) The Resident became eligible for Long Term Care Medicaid benefits effective March 27, 2022.
- 3) The WV Department of Health and Human Resources determined that the Resident's resource amount, or her contribution towards the cost of her stay at the Facility, to be \$1,674 each month (Exhibits F-2 and F-3).
- 4) The Resident has paid the Facility \$2,874 since March 27, 2022 (Exhibits F-2 and F-3).
- 5) The Facility notified the Resident of her past due balance by letters dated July 11, August 4 and September 12, 2022 (Exhibit F-4).
- 6) The Facility issued a 30-Day Notice of Discharge to the Resident on October 3, 2022, advising that she would be discharged on November 1, 2022, due her failure to pay for her stay at the facility.
- 6) The Resident owes the Facility \$7,929.70 as of November 1, 2022 (Exhibits F-2 and F-3).

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.

██████████, administrator for ██████████, testified that the Resident failed to pay her full monthly resource amount of \$1,674 to the Facility since becoming eligible for Medicaid. ██████████ stated the Resident has paid a total of \$2,874 to the Facility but has an unpaid balance of \$7,929.70.

The Resident testified that she was initially confused about her resource and the amount she was required to pay the Facility each month and stated she has outstanding bills that she is paying with her monthly income. The Resident stated she cannot find an apartment to rent due to credit issues and has no one in the community to help her.

The Resident started receiving Long Term Care Medicaid benefits on March 27, 2022 and was required to pay \$1,674 to the Facility each month towards her cost of care. The Resident failed to pay her full resource amount each month, creating an outstanding balance of over \$7,000. The

Facility has notified the Resident of her balance on several occasions, but the Resident failed to satisfy her monthly obligation to the Facility.

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 \$7,929.70 to the Facility.
- 3) The Facility notified the Resident several times of her 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] to discharge the Resident from its facility due to non-payment.

ENTERED this 29th day of November 2022.

Kristi Logan
Certified State Hearing Officer