



**STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
Office of the Inspector General  
Board of Review**

**Jeffrey H. Coben, MD  
Interim Cabinet Secretary**

**Sheila Lee  
Interim Inspector General**

March 21, 2023

[REDACTED]

Dear [REDACTED]:

RE: [REDACTED]

ACTION NO.: 23-BOR-1200

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: 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 #23-BOR-1200**

[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 March 14, 2023, on an appeal filed February 10, 2023.

The matter before the Hearing Officer arises from the January 31, 2023 decision by the Facility to propose an involuntary transfer of the Resident for non-payment.

At the hearing, the Facility appeared by [REDACTED], Business Office Manager. The Resident appeared by her son and attorney-in-fact, [REDACTED]. Appearing as a witness for the Resident was her granddaughter, [REDACTED]. All witnesses were placed under oath and the following documents were admitted into evidence.

**Facility's Exhibits:**

- F-1 Letter of explanation dated March 6, 2023 from [REDACTED]
- F-2 Notice of Transfer or Discharge Notice dated January 31, 2023
- F-3 [REDACTED] billing statement dated March 1, 2023; [REDACTED] billing statement dated February 1, 2023; [REDACTED] billing statement dated January 1, 2023; [REDACTED] billing statement dated December 1, 2022; [REDACTED] billing statement dated November 1, 2022; [REDACTED] billing statement dated October 1, 2022; [REDACTED] billing statement dated September 1, 2022; [REDACTED] billing statement dated August 1, 2022
- F-4 Power of Attorney for [REDACTED], signed and dated August 28, 2018
- F-5 Email chain from [REDACTED] dated March 6, 2023, regarding social service notes from February 1 to February 17, 2023.

**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 April 23, 2021. (Exhibit F-1)
- 2) On January 31, 2023, the Facility issued a 30-Day Transfer or Discharge Notice due to non-payment for the Resident's stay at the Facility. (Exhibit F-2)
- 3) There was no evidence produced to show that the reason for discharge was included in the Resident's medical record.
- 4) The Resident's insurance coverage ended, and she became self-pay, but was unable to meet her monthly obligations to the Facility sometime in August 2022. (Exhibit F-3)
- 5) The Resident has an accrued amount owed to the Facility for her stay of \$79,204 as of March 1, 2023. (Exhibit D-3)
- 6) The Resident's representative does not contest the amount owed to the Facility.
- 7) The Resident owns two homes.
- 8) The Facility has not found a suitable location for a safe transfer or discharge of the Resident as of the date of the Notice.

### **APPLICABLE POLICY**

**42 CFR §483.15(c)(1)(i)(E)** provides in pertinent part that the facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless ... 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 that 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.

**42 CFR §483.15(c)(5)** provides in pertinent part that 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.



**West Virginia Code §4.13.4**, in pertinent part, requires that before a nursing home transfers or discharges a resident, it shall provide written notice to the resident and his or her legal representative as appropriate, of the transfer or discharge. The notice shall be in a language the resident understands and shall include ... the location or other nursing home to which the resident is being transferred or discharged.

**West Virginia Code §64-13-4(6)(b)** provides in pertinent part, that 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**

State and 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 April 23, 2021. Because the Resident's insurance coverage for her stay at the Facility ended, she became self-pay. However, the Resident became unable to pay for her stay at the Facility and she has accrued a total of \$79,204 as of the March 1, 2023 billing statement. On January 31, 2023, the Facility presented the Resident with a Transfer or Discharge Notice (Notice) based upon the non-payment of the Resident's outstanding balance. The Resident's son, [REDACTED], who is also her attorney-in-fact, appeals the Facility's decision.

The Facility must demonstrate by a preponderance of the evidence that: 1) the Resident has failed, after reasonable and appropriate notice, to pay for her stay at the Facility, 2) the reason for the Resident's discharge/transfer is documented in the Resident's medical record, and 3) the January 31, 2023 Notice meets state and federal regulations.

The evidence presented showed that the Facility issued billing statements each month, thus properly notifying the Resident of unpaid charges. [REDACTED], does not dispute the outstanding balance owed to the Facility. [REDACTED] testified that the Resident owns two homes which has hindered her ability to qualify for Medicaid benefits. [REDACTED] testified that he has been under the advice of counsel in attempting to get the Resident qualified for Medicaid benefits. [REDACTED] stated that negotiations with the resident of the premises of the second home are progressing and he believes that a large payment of \$35,000 will be forthcoming to pay down the amount owed to the Facility. However, there will be a significant amount still owed to the Facility.

State and federal regulations require that the reason for a Resident's involuntary discharge be documented in the Resident's medical records. There was no evidence presented to show that the Facility met this requirement. Also, the Facility did not meet the state and federal requirement of providing a location or destination for the safe discharge/transfer of the Resident. The statement on the Notice that the destination of transfer is "home or another SNF/ALF" is insufficient. [REDACTED] provided testimony that he cannot safely care for the Resident at his home. There was no other testimony or evidence provided that the Resident could safely be transferred to her home.



There was no evidence presented to show that the Facility has found a reasonably appropriate alternative placement for the Resident. West Virginia regulations require a facility to take steps to assist the Resident with finding a reasonably appropriate alternative placement before involuntarily discharging/transferring a Resident.

Because the Facility did not show that the reason for the proposed discharge of the Resident was included in the Resident's medical records and the location of "home or another SNF/ALF" stated on the Notice of discharge/transfer is insufficient, the Facility's January 31, 2023 proposed involuntary discharge of the Resident cannot be affirmed.

### **CONCLUSIONS OF LAW**

- 1) A resident may be discharged from a 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 Resident received reasonable and appropriate notice of amounts owed for her stay at the Facility, and as of March 1, 2023, the Resident has a total of \$79,204 owed to the Facility for her care.
- 3) There was no evidence presented to show that the reason for the Resident's discharge was documented in the Resident's medical record.
- 4) A Facility must identify an appropriate transfer location prior to discharge and provide notification of the location to which the Resident is being transferred.
- 5) The Facility did not show that the Resident could be safely discharged to home as noted on the January 31, 2023 Involuntary Transfer or Discharge Notice.
- 6) The location of discharge/transfer to another SNF/ALF is insufficient as it is vague and undetermined as of the January 31, 2023 Involuntary Transfer or Discharge Notice.
- 7) The Facility's January 31, 2023 proposed Involuntary Transfer or Discharge did not meet statutory regulations.

### **DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Facility's January 31, 2023 proposal to transfer the Resident.

**ENTERED this 21<sup>st</sup> day of March 2023.**

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**Lori Woodward, Certified State Hearing Officer**