



**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**

May 3, 2023

[REDACTED]

RE: [REDACTED]
ACTION NO.: 23-BOR-1237

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,

Tara B. Thompson, MLS
State Hearing Officer
Member, State Board of Review

Encl: Decision Recourse
Form IG-BR-29

cc: [REDACTED]

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

[REDACTED]

Resident,

v.

Action Number: 23-BOR-1237

[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 22, 2023.

The matter before the Hearing Officer arises from the March 29, 2023 decision by the Facility to discharge the Appellant from the Facility.

At the hearing, the Facility appeared by [REDACTED] Facility Administrator. Appearing as witnesses for the Respondent were [REDACTED] Facility Business Office Manager; [REDACTED] Facility Social Services Worker; [REDACTED] Facility Wound Care Nurse; [REDACTED] Facility Skin Care Team Leader; and [REDACTED] Facility Rehabilitation Director. The Resident appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

F-1 Email Correspondence, dated March 15, 2023
 Facility Documentation, 80 pages

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 following Findings of Fact are set forth.

FINDINGS OF FACT

- 1) The Resident manages his own financial affairs.
- 2) The Resident intends to return to his home upon discharge from the Facility (Exhibit D-1).
- 3) The Resident receives Medicaid to financially assist with his cost of care at the Facility.
- 4) The Resident's monthly patient responsibility amount owed to the Facility for his care is \$1,218.
- 5) On February 27, 2023, the Facility issued a notice advising the Appellant that "discharge or transfer from this facility will be necessary" because the Appellant "failed after reasonable and appropriate notice to pay for or to have paid by Medicare or Medicaid a stay at the health facility" (Exhibit D-1).
- 6) The notice advised that the Resident would be transferred "Home," effective March 29, 2023.
- 7) On February 24, 2023, [REDACTED] spoke with the Resident about his owed patient responsibility balance (Exhibit D-1).
- 8) On February 24, 2023, the Resident verbally refused to pay his owed patient responsibility balance (Exhibit D-1).
- 9) At the time of the Facility's February 27, 2023 decision to discharge the Resident, the Resident had not paid his monthly patient responsibility amount for Facility care provided in February 2023.
- 10) At the time of the Facility's February 27, 2023 decision to discharge the Resident, the Resident required the services provided by the Facility.

APPLICABLE POLICY

Code of Federal Regulations 42 CFR § 483.10(f)(10) provides in pertinent part:

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

42 CFR § 483.10(g)(4) provides in pertinent parts:

The resident has the right to receive notices orally and in writing in a format and a language he understands.

42 CFR § 483.15(c)(1)(i)(E) provides in pertinent parts:

A facility may discharge a resident 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.

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

When the facility transfers or discharges a resident for failure to pay for his stay at the Facility, the facility must ensure that the basis for discharge is documented in the resident's medical record.

West Virginia Code of State Rules § 64-13-4(13)(6)(b) and 64-13-4(13)(7)(a) provide in pertinent parts:

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

A nursing home shall not discharge a resident requiring the nursing home's services to a community setting against his will.

DISCUSSION

The Facility decided to discharge the Resident to his home because he failed to pay for or arrange payment for his stay at the Facility. The Resident contested the Facility's decision. Evidence regarding the Resident's health and balance accrual beyond the February 27, 2023 decision to discharge the Resident could not be considered as the Hearing Officer only has the authority to consider circumstances that existed at the time of the Facility's decision to discharge the Resident.

The regulations permit a facility to discharge a resident for non-payment for his facility stay after the resident has received reasonable and appropriate notice to pay for his stay at the facility. The Facility had to prove by a preponderance of the evidence that the Resident failed, after receiving reasonable and appropriate notice, to pay for his stay at the Facility.

The Facility is prohibited from involuntarily discharging residents that still require the Facility's services to a community setting. The preponderance of evidence had to reveal that the Resident no longer required the services provided by the Facility.

During the hearing, the Facility testified to the amount of the Resident's monthly resource payment owed to the Facility. The Resident did not refute that he had an unpaid balance for his cost of Facility care, only that the amount of the resource payment was too high. The Resident argued that

if he paid the amount owed to the Facility, he would not be able to afford expenses incurred beyond the Facility — including the costs of maintaining his residence and vehicle.

The evidence revealed that at the time of the Facility's discharge decision, the Facility had spoken with the Resident on one occasion regarding his unpaid balance. While there was testimony that the Resident was aware of the amount owed to the Facility, no corroborating records were submitted to verify that the Resident received reasonable and appropriate notice of his owed balance, as demanded by the regulations.

During the hearing, the Facility's representative testified that the Resident's clinical team agreed that the Resident still requires the medical services provided by the Facility. Because the Resident still requires the Facility's services, the Facility may not involuntarily discharge the Resident to the community.

CONCLUSIONS OF LAW

- 1) A facility may discharge a resident 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 revealed that the Resident had not paid or arranged payment for his patient responsibility amount for Facility care provided.
- 3) The Resident has a right to know, in advance, what charges a facility may impose against the Resident's personal funds.
- 4) The Resident has a right to receive notices orally and in writing.
- 5) The preponderance of evidence failed to establish that the Resident received reasonable and appropriate notice of his Facility payment requirement.
- 6) Because the preponderance of evidence failed to establish that the Resident received reasonable and appropriate notice of his Facility payment requirement, the Facility's decision to discharge the Resident was incorrect.
- 7) Facilities are not permitted to discharge a resident that requires the nursing home's services to a community setting against his will.
- 8) The preponderance of evidence revealed that the Resident required the Facility's services at the time of the Facility's proposed discharge.
- 9) The Facility incorrectly acted to involuntarily discharge the Resident to the community.

DECISION

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

Entered this 3rd day of May 2023.

Tara B. Thompson, MLS
State Hearing Officer