



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

Jeffery H. Coben, MD
Interim Cabinet Secretary

Sheila Lee
Interim Inspector General

April 14, 2023

[REDACTED]

RE:

[REDACTED]
BOR Action #: 23-BOR-1397

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,

Eric L. Phillips
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**

[REDACTED]

Resident,

v.

Action Number: 23-BOR-1397

[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 April 12, 2023, on an appeal filed March 20, 2023.

The matter before the Hearing Officer arises from the February 24, 2023 decision by the Facility to discharge the Resident for non-payment of nursing care services.

At the hearing, the Facility appeared by [REDACTED], Social Worker, [REDACTED]. Appearing as a witness for the Facility was [REDACTED], Billing Specialist, [REDACTED]. The Resident appeared by [REDACTED].

All witnesses were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 Hearing Summary
- F-2 Notice of Resource Amount from West Virginia Department of Health and Human Services
- F-3 Patient Report [REDACTED]
- F-4 Letter dated October 12, 2022
- F-5 Progress Notes [REDACTED]
- F-6 Notice of Discharge dated February 24, 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 has been a patient at [REDACTED], hereinafter Facility, since May 2022.
- 2) On June 23, 2022, the Resident received a notice from the West Virginia Department of Health and Human Resources, indicating that her patient responsibility amount for her care at the facility would increase to \$2543.20 per month effective August 1, 2022. (Exhibit D-1)
- 3) On September 9, 2022, a payment was made to the Facility on behalf of the Resident in the amount of \$1450.00. (Exhibit D-1)
- 4) On October 12, 2022, a payment was made to the Facility on behalf of the Resident in the amount of \$1100.00.
- 5) On October 12, 2022, the Facility issued a notice to the Resident (Exhibit F-4) which indicated that she was responsible for the past due balance of her care in the amount of \$7622.80.
- 6) On November 1, 2022, the Resident's daughter and the Facility established an agreement for a payment of \$4000.00 and an additional payment of \$300.00 per month owed to the Facility for the Resident's care.
- 7) The November 1, 2022 payment agreement was voided after noncompliance.
- 8) On December 9, 2022, a payment was made to the Facility on behalf of the Resident in the amount of \$2543.20.
- 9) On February 23, 2023, a payment was made to the Facility on behalf of the Resident in the amount of \$2543.20.
- 9) On February 23, 2023, the Resident's balance for her nursing home care totaled \$12,709.20.
- 10) On February 24, 2023, the Facility issued a 30-day notice of discharge to the Resident and her daughter which indicated that "after reasonable and appropriate written notice, the resident (or resident representative) has failed to pay for a stay at the facility."
- 11) On February 27, 2023, the Facility requested the total amount of non-payment due on the Resident's account in the amount of \$12,709.20. The Facility denied the Resident's daughter's request for an additional payment plan agreement.

APPLICABLE POLICY

Code of Federal Regulations 42 §483.15(c)(1)(i) documents in pertinent part:

§ 483.15 Admission, transfer, and discharge rights.

(c) Transfer and discharge —

(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, pursuant to [§ 431.230 of this chapter](#), when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to [§ 431.220\(a\)\(3\) of this chapter](#), 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, as required at [§ 483.70\(l\)](#).

(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 which govern the involuntary discharge of a nursing home resident permit the discharge when 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. When a facility transfers or discharges a resident under any of the circumstances provided under regulation §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 and appropriate information is communicated to the receiving health care institution or provider. Additionally, the documentation must include the basis for the transfer. The facility may not transfer

or discharge the resident while an appeal is pending and any notice of discharge must be made by the facility at least 30 days prior to the intended discharge. The intended notice of discharge must include the reason for discharge, effective date of discharge, the location to which the resident is discharged, the resident's appeal rights, and contact information of the Office of the State Long-Term Care Ombudsman.

On February 24, 2023, the Facility issued a 30-day notice of discharge (Exhibit F-6) to the Resident and her daughter. The notice indicated that after reasonable attempts to collect the non-payment of services, the Resident failed to pay for the stay at the facility. The Facility had to demonstrate by a preponderance of the evidence that at the time of the decision to discharge the Resident, adequate payments had not been made for rendered services.

On August 1, 2022, the Resident experienced a change to her Medicaid benefits which increased her payment responsibility to the Facility to the amount of \$2543.20 per month. As of October 2022, the Resident had a total non-payment for services in the amount of \$7622.80, which was noticed to both the Resident and her daughter (Exhibit F-4). Throughout the timeline of August 2022 through February 2023, payments were made on behalf of the Resident to the Facility totaling \$7636.40; however, a significant portion of an unpaid balance remained on the Resident's account. Evidence revealed that both parties negotiated a payment arrangement in November 2022; however, the agreement was not honored by the Resident's daughter. In February 2023, the Resident's remaining unpaid balance was \$12,709.20, which prompted the 30-day notice of discharge (Exhibit F-6). After reasonable attempts to collect payment, the Facility issued the notice of discharge on February 24, 2023, with March 26, 2023 as the effective date of discharge of the Resident to her daughter's address.

The Resident's daughter, [REDACTED], testified that she had made multiple attempts to secure a loan to pay for her mother's nursing home care. [REDACTED] acknowledged that she has not made any payments to the Facility since February 2023, but expressed an interest in her mother remaining at the facility. [REDACTED] purported that she secured a loan on April 12, 2023 and intended to pay off the remaining balance of her mother's account and future payments for her mother's nursing home care.

After reasonable and appropriate notices have been made to collect a non-payment for a stay, a facility may involuntarily discharge a resident. Evidence revealed that both parties remained in communication from August 2022 until February 2023, regarding the unpaid balances on the Resident's account. In October 2022, the Facility issued letters concerning the collection of the non-payment and negotiated a payment arrangement with the Resident's daughter which failed to remedy unpaid balance. Over the last seven months, the Facility attempted to collect payment from the Resident with limited success and appropriately issued a notice of discharge in February 2023. The issued notice included the statutory requirements of a proposed transfer date, place of transfer, appeal rights, and names and contact information for other agencies, including the Office of the Ombudsman.

While testimony indicated that a loan had been secured for payment of the past due balance and future payments for the Resident's care, no payment had been transmitted before the hearing of the Resident's appeal. Based on a review of all evidence, the Facility showed by a preponderance of the evidence that it acted in accordance with statutory regulations in its proposed discharge of the Resident after making multiple attempts in assisting the Resident and her daughter in making payments on the outstanding and accumulating account balances for the Resident's care. Whereas,

the Resident has failed to pay the outstanding balances for her nursing care after appropriate notice, the Facility's proposed discharge of the Resident is affirmed.

CONCLUSIONS OF LAW

- 1) Federal statutory regulations allow a facility to initiate involuntary discharge proceedings against a resident if, after reasonable and appropriate notice, the resident fails to pay for a stay at the nursing home.
- 2) The Resident received reasonable appropriate notice and accommodation to facilitate payment to the Facility for her cost of nursing care.
- 3) The February 24, 2023, 30-Day Notice of Discharge met statutory regulations.

DECISION

It is the decision of the State Hearing Officer to UPHOLD the Facility's proposal to discharge the Resident.

ENTERED this _____ day of April 2023.

Eric L. Phillips
State Hearing Officer