



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

**Sherri A. Young, DO, MBA, FAAFP
Interim Cabinet Secretary**

**Sheila Lee
Interim Inspector General**

July 25, 2023

[REDACTED]

Re: [REDACTED] v WV DHHR
ACTION NO.: 23-BOR-1775

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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

Encl: Recourse to Hearing Decision
Form IG-BR-29

cc: [REDACTED] Administrator, [REDACTED]

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

[REDACTED]
Appellant,

v.

Action Number: 23-BOR-1775

**WEST VIRGINIA DEPARTMENT OF
HEALTH AND HUMAN RESOURCES,**

Respondent.

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 (WV) Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on June 28, 2023, on an appeal filed June 11, 2023.

The matter before the Hearing Officer arises from the May 11, 2023 decision of [REDACTED] (Facility) to discharge the resident due to nonpayment of cost-of-care.

At the hearing, the Respondent appeared by [REDACTED] Administrator. The Appellant appeared *pro se*. Both witnesses were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 Case Summary letter signed by [REDACTED], dated June 21, 2023; Table of Contents
- F-2 Notice of Involuntary Discharge, dated May 11, 2023
- F-3 Admission Records, dated May 30, 2023; Admission Agreement signed by [REDACTED], dated February 26, 2023; Consent for Treatment signed by [REDACTED], dated February 26, 2023; and Pre-Admission Screening (PAS) signed by [REDACTED] M.D., dated February 22, 2023
- F-4 Voluntary Binding Arbitration Agreement, signed by [REDACTED], dated February 26, 2023
- F-5 [REDACTED] Progress Notes, dated February 21, 2023; Physical Therapy

- Evaluation, dated February 25, 2023; Physical Therapy Treatment Encounter Notes, dated February 25, 2023 through March 08, 2023; Physical Therapy Progress Report, dated March 12, 2023; Supplemental Therapy Notes, dated March 10, 2023; Physical Therapy Treatment Encounter Notes, dated March 12, 2023 through March 16, 2023; and Physical Therapy Discharge Summary, dated March 16, 2023
- F-6 Aetna Coverage and Benefits Eligibility, dated April 20, 2023; [REDACTED] Credit/Debit Card and Direct Transfer Authorization, Resident Signature Refused, dated March 06, 2023; and Costs and Services Covered by Medicaid Form, dated February 28, 2023
- F-7 [REDACTED] 72 Hour Financial Meeting Resident Handout signed by [REDACTED], dated March 03, 2023; WV DHHR Notice of Contribution to Cost-of-Care, dated March 02, 2023
- F-8 [REDACTED] Account Activity Report
- F-9 [REDACTED] Account Statement, dated July 01, 2023; [REDACTED] Transaction Report, dated February 01, 2023 through June 30, 2023
- F-10 Rehab-Restorative Nursing Referral, dated March 14, 2023; Interdisciplinary Therapy Screen, signed by [REDACTED], dated May 18, 2023

Resident's Exhibits:

- R-1 Written Statement with Photographs from [REDACTED], received June 27, 2023

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 February 23, 2023. (Exhibits F-1 through F-10, and R-1)
- 2) The Resident receives Medicaid to financially assist with his cost-of-care at the Facility. (Exhibits F-1 through F-9)
- 3) Beginning on March 01, 2023, the Resident was responsible for a cost-of-care contribution in the amount of \$5,826 per month. (Exhibit F-7)
- 4) The Resident's total cost-of-care contribution for the months of March 2023 through July 2023, totaled \$20,130. (Exhibit F-9)
- 5) The Facility met with the Resident on multiple occasions to discuss his cost-of-care balance. (Exhibits F-2 through F-8)
- 6) On May 11, 2023, the Facility issued a notice of involuntary discharge advising the

Appellant that he would be discharged to a suitable/like long term care facility effective June 11, 2023, due to the failure to pay for, or have paid under Medicaid, a stay at the Facility. (Exhibit F-2)

- 7) On May 22, 2023, a payment was made to the Facility on behalf of the Resident in the amount of \$1,000. (Exhibit F-9)
- 8) On June 01, 2023, a payment was made to the Facility on behalf of the Resident in the amount of \$5,826. (Exhibit F-9)
- 9) On June 12, 2023, a payment was made to the Facility on behalf of the Resident in the amount of \$1,174. (Exhibit F-9)

APPLICABLE POLICY

Code of Federal Regulations 42 CFR § 483.15(c)(5) provides, in part:

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, a statement of the resident's appeal rights, including the name, address (mailing and email), and the 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; the name, address (mailing and email), and telephone number of the Office of the State Long-Term Care Ombudsman.

Code of Federal Regulations 42 CFR § 483.15(c)(ii) provides, in part:

The Facility may not transfer or discharge the resident while the appeal is pending, unless the failure to discharge or transfer would endanger the health or safety of the Resident or other individuals.

Code of Federal Regulations 42 CFR § 483.15(c)(4) provides, in part:

The notice of transfer or discharge shall be made by the nursing home at least thirty (30) days before the resident is discharged or transferred, except the notice shall be made as soon as practicable before the transfer or discharge when the safety of persons in the nursing home would be endangered, the health of persons in the nursing home would be endangered, health improves, or the resident has been at the facility less than 30 days.

West Virginia Code § 4.13.4 provides, in part:

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 part:

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.

Bureau for Medical Services (BMS) Manual § 514.6.10 provides, in part:

As a part of the financial eligibility determination for the Medicaid nursing facilities benefit, the DHHR calculates the dollar amount the individual must contribute to the cost of care every month. The monthly Medicaid payment to the nursing facility will be reduced by the dollar amount of the contribution of the cost of care. The administrator or designee is responsible for collecting the monthly contribution to the cost-of-care.

DISCUSSION

The Resident receives Medicaid to financially assist with his care costs at the Facility, but was required to pay the Facility for a portion of his cost-of-care. 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. 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. The Facility had to demonstrate by a preponderance of evidence that the Resident had failed, after reasonable and appropriate notice to pay for, or have paid under Medicare or Medicaid, his facility cost-of-care. The Facility must prove it was proper to discharge for non-payment and that it properly noticed discharge.

On May 11, 2023, the Facility issued a notice of involuntary discharge containing all necessary elements, including advising the Resident that on June 11, 2023, he would be discharged from the Facility due to non-payment of his facility cost-of-care. The notice included the effective date of transfer and the proposed location of transfer. The notice stated the reason for the discharge as: "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." The Facility's representatives testified that on multiple occasions, written and verbal attempts were made with the Resident to establish payment arrangements to address the Resident's balance due to the Facility. As of the date of the hearing, the evidence confirmed that the Resident had a balance due the Facility that totaled \$20,130.

The Resident does not dispute that he has an outstanding balance owed to the Facility; however, he testified that because of his other outstanding bills and income tax debt, he is not able to meet his monthly contribution to care cost. The Resident argued that because he also has AETNA insurance coverage, his stay at the facility should be covered in full. The Facility testified that due to non-compliance, the Resident lacks progression past his baseline, therefore not meeting the prior authorization requirements in order to obtain authorization for payment through AETNA. The Facility further argued that upon admission, they met with the Appellant and thoroughly discussed all the Resident's admission forms, including his cost-of-care contribution. The Appellant did not contest the Facility's testimony, but testified that the Facility's neglect in consulting him with his own plan of care as his reason for refusal to pay his cost-of-care contribution.

The evidence demonstrated that the Resident was approved for Medicaid nursing facility benefits and had a cost-of-care contribution in the amount of \$5,826 per month beginning March 01, 2023. The Facility met with the Resident on multiple occasions, including the months of March, April, and May 2023, to address the Resident's past due cost-of-care balance. Subsequent to the May 11, 2023 discharge notice to the Resident, the Resident made three (3) payments to the Facility totaling \$8,000 that were applied to his cost-of-care balance. Although the Resident has made payments to the Facility since the Facility's issuance of the May 11, 2023 discharge notice, the amounts were insufficient to satisfy the monthly patient responsibility for his facility cost-of-care. After reasonable and appropriate notices have been made to collect a non-payment for a stay, a Facility may involuntarily discharge a resident. The Facility attempted to collect payment from the Resident with limited success and appropriately issued a notice of discharge in May 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. The Facility showed by a preponderance of the evidence that it acted in accordance with Federal Regulations to issue appropriate notice. Therefore, the Facility's proposed discharge of the Resident due to a failure to pay his cost-of-care balance is 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 and Financial Responsible Party received reasonable and appropriate notice that payment to the Facility for his cost-of-care was required.
- 3) As of July 01, 2023, the Resident owes an outstanding balance of \$20,130 to the Facility.
- 4) The Facility's action to initiate discharge proceedings against the Resident based on his failure to pay for cost-of-care is permitted by Federal and State regulations.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the Facility's proposed discharge of

the Resident due to non-payment.

ENTERED this 25th day of July 2023.

Angela D. Signore
State Hearing Officer