



STATE OF WEST VIRGINIA  
DEPARTMENT OF HEALTH AND HUMAN RESOURCES  
OFFICE OF THE INSPECTOR GENERAL

Jeffrey H. Coben, M.D.  
Interim Cabinet Secretary

Board of Review  
416 Adams Street Suite 307  
Fairmont, WV 26554  
304-368-4420 ext. 30018  
[Tara.B.Thompson@wv.gov](mailto:Tara.B.Thompson@wv.gov)

Sheila Lee  
Interim Inspector General

January 18, 2023

[REDACTED]

RE:

ACTION NO.: 22-BOR-2472

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 Board of Review 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 that may be taken if you disagree with the decision reached in this matter.

Sincerely,

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

Enclosure: Decision Recourse  
Form IG-BR-29

CC:

[REDACTED]

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

[REDACTED],

**Resident,**

v.

**ACTION NO.: 22-BOR-2472**

[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 of Chapter 700 of the West Virginia Department of Health and Human Resources' (DHHR) Common Chapters Manual. This fair hearing was convened on December 20, 2022, on an appeal filed with the Board of Review on November 14, 2022.

The matter before the Hearing Officer arises from the Facility's November 8, 2022 decision to discharge the Resident.

At the hearing, the Facility appeared by [REDACTED], Facility Administrator. Appearing as witnesses on behalf of the Facility were [REDACTED] Facility Social Worker; [REDACTED] Facility Therapist; and [REDACTED], Facility Director of Nursing. The Resident appeared *pro se*. All witnesses were sworn in and the following exhibits were entered as evidence.

**Facility's Exhibits:**

- F-1 Evidence List;  
Pre-Admission Screening, submitted November 7, 2022
- F-2 Facility MDS
- F-3 Facility Care Plan Records
- F-4 Facility Physical Therapy Treatment Encounter Notes
- F-5 Facility Social Services Activity Log
- F-6 Facility Progress Note, dated December 10, 2022;  
Handwritten Letter, by the Resident  
Resident's Medical Records

**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) On June 30, 2022, the Resident was admitted to the Facility (Exhibit F-2).
- 2) On November 8, 2022, the Facility issued a notice advising the Resident that she would be discharged from the Facility to [REDACTED] — a homeless shelter — effective December 7, 2022.
- 3) The Facility's November 8, 2022 decision to discharge the Resident to a community setting was an involuntary discharge.
- 4) The notice advised that the reason for discharge was "because your health has improved sufficiently that you no longer need the services provided by the facility."
- 5) The Facility's decision to discharge the Resident was based on information reflected in the Pre-Admission screening completed by the Resident's Facility physician, [REDACTED], on November 7, 2022 (Exhibits F-1).
- 6) On November 7, 2022, [REDACTED] indicated the Resident was recommended for nursing facility placement with a 30 day length of stay (Exhibit F-1).
- 7) [REDACTED] indicated the Resident's prognosis was stable, her rehabilitative potential was good (Exhibit F-1).
- 8) The Resident did not have skilled nursing needs at the time of the PAS (Exhibits F-1 and F-2).
- 9) The Resident independently completes activities of daily living — including bed mobility, transfer, walking, locomotion on and off unit, eating, toilet use, and personal hygiene (Exhibits F-1, F-2, and F-4).
- 10) As of September 22, 2022, the Resident independently completed dressing with supervision and assistance with set-up (Exhibits F-1 and F-2).
- 11) The Facility attempted to find an alternate discharge location for the Resident (Exhibit F-5).
- 12) The Resident is on a waitlist for housing with the [REDACTED] Housing

Authority (Exhibit F-5).

13) The Resident declined discharge to the [REDACTED] Recovery Program (Exhibit F-5).

14) The Resident was ineligible for discharge to [REDACTED]

[REDACTED] (Exhibit F-5).

15) On December 10, 2022, [REDACTED] evaluated the Resident for a move to a different facility (Exhibit F-6).

16) On December 10, 2022, [REDACTED] determined that the Resident no longer required skilled nursing care (Exhibit F-6).

### **APPLICABLE POLICY**

**Code of Federal Regulations 42CFR § 483.15(c)(1)(i)(B) and West Virginia Code § 64-13-4(13)(2)(b) provide in pertinent parts:**

The Facility must permit each Resident to remain in the Facility and not discharge the Resident from the Facility unless the discharge is appropriate because:  
The Resident's health has improved sufficiently so the Resident no longer needs the services provided by the facility;

**Code of Federal Regulations 42CFR §§ 483.15(c)(2)(i)(A), (c)(2)(i)(A), and (c)(2)(ii)(A) provide in pertinent parts:**

When the facility discharges a resident under circumstances specified in paragraph (c)(1)(i)(B), the facility must ensure that the discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

Documentation in the Resident's medical record must include the basis for the transfer per paragraph (c)(1)(i) of this section. The documentation required by paragraph (c)(2)(i) of this section must be made by the resident's physician when discharge is necessary because the Resident's health has improved sufficiently so that the Resident no longer needs the services provided by the facility.

**West Virginia Code §§ 64-13-4(13)(6)(b) and 64-13-4(13)(7)(a) (July 2021) provides in pertinent part:**

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

### **DISCUSSION**

On November 8, 2022, the Facility issued a written notice of discharge advising the Resident that she would be discharged to the [REDACTED], a homeless shelter, effective December 7, 2022, because her health had improved sufficiently that she no longer required the services provided by the Facility. The Resident disagreed with the Facility's decision to discharge her to a homeless shelter. The Resident argued that she would not be able to meet her medical needs at a homeless shelter.

The regulations permit a Facility to discharge a Resident when their health has improved sufficiently such that they no longer require services provided by the Facility. When a Resident is discharged for this reason, documentation in the Resident's medical record must include the basis for discharge and be made by the Resident's physician.

The Facility has the burden of proof. The Facility had to demonstrate by a preponderance of evidence that at the time of the November 8, 2022 decision to discharge the Resident, the Resident's health had improved sufficiently that she no longer required services provided by the facility. The evidence had to reveal that the reason for the Resident's discharge was documented in the Resident's medical record by the Resident's physician. As the Facility's written notice of discharge was issued November 8, 2022, submitted evidence dated beyond November 8, 2022 was given little weight in the decision of this Hearing Officer.

The PAS indicated that the Resident's physician recommended a facility placement 30-day length of stay. The October 2022 physical therapy notes indicate the Resident was making progress with the motion of her shoulder. The November 2022 physical therapy notes indicate that the Resident had decreased pain and participated in skilled interventions. At the time of the PAS, the evidence revealed that the Resident was able to conduct activities of daily living independently and did not require skilled nursing care.

The evidence submitted indicated that on December 10, 2022, the Resident physician evaluated her for discharge and documented that she no longer required skilled nursing care. This record is dated after the Facility's November 8, 2022 decision to discharge the Resident. No evidence was entered to establish that the Resident's record contained physician documentation of her reason for discharge at the time of the November 8, 2022 discharge notice. Because the physician documentation of the basis for the Resident's discharge was not made until nearly a month after the November 8, 2022 decision to discharge the Resident, the Facility's decision to discharge the Resident, effective December 7, 2022, cannot be affirmed.

The Resident testified that she has upcoming appointments with specialists. The Resident contended that she has constant pain and limited arm mobility. The documentation indicated the Resident received medical assessments in April, June, and August 2022. These records pre-date

the Facility's decision to discharge the Resident but failed to establish that the Resident required skilled nursing facility care at the time of the Facility's decision to discharge her.

#### *Discharge Location*

The Facility has a responsibility to assist the Resident with aligning appropriate discharge arrangements. The evidence revealed that the Facility attempted to assist the Resident with aligning an alternate discharge location. The evidence indicated that the Resident was either ineligible for or refused multiple alternative discharge locations. The evidence revealed the Facility assisted the Resident and that she is on a waiting list for housing. No evidence was entered to refute that the Facility made reasonable efforts to align alternative discharge arrangements for the Resident. As the evidence indicated the Resident had no skilled nursing needs at the time of Facility's decision to discharge the Resident, no evidence was entered to establish how the Resident would be unable to meet her medical needs at a homeless shelter.

#### *Notice*

The Facility's notice reflected incorrect contact information for the Board of Review. The Resident was not prejudiced by this error as she was able to request and receive a fair hearing. However, the Facility should ensure that any discharge notices issued to residents in the future contain correct and current contact information for the offices listed on the notice.

### **CONCLUSIONS OF LAW**

- 1) The Facility may involuntarily discharge a Resident to a community setting when the Resident does not require the Facility's services.
- 2) The preponderance of evidence demonstrated that the Resident did not require skilled nursing care at the time of the Facility's November 8, 2022 decision to discharge the Resident.
- 3) The Facility is required to assist the Resident in finding a reasonably appropriate alternative placement before the proposed discharge and taking steps under the nursing home's control to assure safe relocation.
- 4) The preponderance of evidence demonstrated that the Facility took reasonable steps within the Facility's control to assist the Resident with finding a reasonably appropriate alternative placement before her proposed discharge.
- 5) The reason for the Resident's discharge must be documented by the Resident's physician in the Resident's medical record.
- 6) The preponderance of evidence failed to prove that on November 8, 2022, the Resident's medical record contained documentation by her physician indicating the basis for her discharge.
- 7) Because the evidence failed to prove that the Resident's physician had documented the

reason for her discharge in her medical record, the Facility's November 8, 2022 decision to discharge the Resident, effective December 7, 2022, was incorrect.

**DECISION**

It is the decision of the State Hearing Officer to **REVERSE** the Facility's decision to discharge the Resident from the Facility, effective December 7, 2022.

ENTERED this 18<sup>th</sup> day of January 2023.

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**Tara B. Thompson, MLS**  
State Hearing Officer