



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

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

**Christopher G. Nelson
Interim Inspector General**

December 28, 2023

[REDACTED]

RE: [REDACTED]
ACTION NO.: 23-BOR-3443

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-3443

**[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 December 20, 2023, on an appeal filed November 17, 2023.

The matter before the Hearing Officer arises from the October 20, 2023 decision by the Facility to propose an involuntary discharge/transfer of the Resident.

At the hearing, the Facility appeared by [REDACTED]. Appearing as a witness for the Facility was [REDACTED], Business Office Manager. The Resident was present but was represented by her sister, [REDACTED]. All witnesses were placed under oath and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 October 20, 2023 30-Day Notice of Discharge and Transfer
- F-2 [REDACTED] Activity Report from November 30, 2022 through
October 25, 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 is a private-pay patient at the Facility who had applied for West Virginia Medicaid benefits sometime in February 2023.
- 2) The Resident applied for Medicaid in February and again in July 2023 - both were denied.
- 3) The Resident's July 2023 Medicaid application was denied for being over the allowable asset limit.
- 4) It was discovered that the Resident has four separate bank accounts and four vehicles.
- 5) The Resident has refused to cooperate with obtaining current bank account statements.
- 6) There is no medical power of attorney or an attorney-in-fact on record for the Resident.
- 7) The Resident has been determined by the Facility's physicians to be mentally competent and able to make her own decisions.
- 8) On October 20, 2023, the Facility issued a 30-Day Discharge Notice (hereinafter referred to as "Notice") to the Resident advising her that she would be discharged on November 20, 2023 due to non-payment (Exhibit F-1)
- 9) The October Notice listed the location of discharge as [REDACTED] which is the Resident's address prior to admission to the Facility.
- 10) The Resident's outstanding balance with the Facility is \$137,968.48 as of October 2023. (Exhibit F-2)

APPLICABLE POLICY

42 CFR §483.15(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.

42 CFR §483.15(c)(2), *Documentation*, in pertinent part:

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 paragraphs (c)(1)(i)(c) or (D) of this section.

42 CFR §483.15(c)(5), in pertinent part;

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:

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

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. Notice of the proposed discharge must be made 30 days in advance and must include the location to which the resident is to be discharged. Additionally, federal regulations require physician documentation be recorded in a nursing facility resident's medical record regarding the specific reason the resident requires a transfer or discharge. Discharge documentation is required regardless of the reason for discharge.

The Facility notified the Resident on October 20, 2023, that she would be discharged to [REDACTED] on November 20, 2023 due to non-payment on November 20, 2023.

The Facility's witness, [REDACTED], testified that the Resident's February 2023 Medicaid application was denied. Another Medicaid application was made in July 2023, which was denied for being over the allowable asset limit. [REDACTED] testified that the Resident has four separate bank accounts totaling \$10,000 and has four vehicles in her name. [REDACTED] stated that the Facility made several attempts with the Resident and the Resident's daughter to obtain current bank information. [REDACTED] further testified that the Resident refused to assist in obtaining her bank statements, even after transportation was arranged to take the Resident to the bank. (It is noted that the bank would not release any of the Resident's information until her identity could be verified.) The Resident's representative, [REDACTED], testified that the Resident was suspicious of the Facility's reasons for taking her to the bank and, therefore, refused to go.

The evidence showed that the Facility made several attempts since July 2023 to assist the Resident with obtaining documents necessary to possibly qualify for Medicaid or make payments towards her outstanding balance. Unfortunately, the Resident has refused to cooperate. The testimony and evidence showed by a preponderance of evidence that the Resident was given reasonable and appropriate notice of the outstanding balance owed to the Facility.

[REDACTED] did not contest the fact or amount of the outstanding balance. However, [REDACTED] was concerned because she was unaware of the proposed discharge until after the Resident informed her after she received the Notice in October. The Facility's representative, [REDACTED], testified that the Resident has been found by the Facility's physicians to be mentally competent and does not have a medical power of attorney or attorney-in-fact listed in her records. Therefore, [REDACTED] would not have been notified by the Facility of the proposed discharge or attempts to obtain payment for the outstanding balance.

[REDACTED] was also concerned because the Resident had expressed a desire to be transferred to a nursing facility in [REDACTED] to be close to her; however, no steps have been taken to arrange a possible out-of-state transfer. [REDACTED] testified that the Resident had not expressed a desire to be transferred to [REDACTED] prior to the discharge Notice. The location of the discharge listed on the Notice was the Resident's previous address prior to admission to the Facility. The Facility did not provide any evidence to show that the proposed location of transfer was a reasonably appropriate alternative placement or that there was a plan developed to minimize any transfer trauma to the Resident. Additionally, the Facility failed to provide documentation or testimony showing that the reason for the Resident's discharge had been documented in her

medical record. Because the Facility failed to show by a preponderance of evidence that it followed federal and state regulations in issued the proposed 30-day transfer/discharge notice, its decision cannot be affirmed.

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 evidence showed by a preponderance of evidence that the Facility provided reasonable and appropriate notice for payment of the Resident's outstanding balance owed to the Facility.
- 3) Federal regulations require that documentation regarding the reason a nursing facility resident requires a transfer or discharge must be included in the resident's medical record.
- 4) There was no evidence presented that a physician documented the reason for the Resident's discharge in her medical record.
- 5) State regulations require that a facility assist the resident in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge and to develop a plan designed to minimize any transfer trauma to the resident.
- 6) The Facility failed to show that the proposed location of discharge is a reasonably appropriate alternative placement or that it developed a plan designed to minimize any transfer trauma to the Resident.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Facility's October 20, 2023 proposal to transfer/discharge the Resident.

ENTERED this 28th day of December 2023.

Lori Woodward, Certified State Hearing Officer