



State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
150 Maplewood Avenue
Lewisburg, WV 24901

Joe Manchin III
Governor

Martha Yeager Walker
Secretary

March 6, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 8, 2007. Your hearing request was based on Fayette Nursing & Rehabilitation Center's proposal to discharge you from its nursing facility.

In arriving at a decision, the State Hearings 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.

The state and federal regulations that govern the Medicaid Long-Term Care Program state that the facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless transfer or discharge is appropriate. One of the appropriate reasons is because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility. The Code of Federal Regulations provides notification requirements and states that a facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. If the policy was misapplied or other incorrect decision was made, the State Hearing Officer will reverse. {Code of Federal Regulations §42 CFR 483.12 & WVDHHR Common Chapters Manual, Chapter 780.D.1}

The information submitted at your hearing revealed that Fayette Nursing & Rehabilitation Center fails to meet the regulatory requirements found in the Code of Federal Regulations.

It is the decision of the State Hearing Officer to **reverse** the proposal of Fayette Nursing & Rehabilitation Center to discharge you from the nursing facility pending proper notification.

Sincerely,

Margaret M. Mann
State Hearing Officer
Member, State Board of Review

cc: Erika H. Young, Chairman, Board of Review
[REDACTED] Administrator, [REDACTED] Center
[REDACTED] MPOA

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

_____,
Claimant,

v.

Action Number: 07-BOR-588

Center,

Respondent.

DECISION OF STATE HEARING OFFICER

I. INTRODUCTION:

This is a report of the State Hearing Officer resulting from a fair hearing concluded on February 8, 2007 for _____. This hearing was held in accordance with the provisions found in the Common Chapters Manual, Chapter 700 of the West Virginia Department of Health and Human Resources. This fair hearing was convened on February 8, 2007 on a timely appeal filed January 16, 2007.

II. PROGRAM PURPOSE:

The Program entitled Long Term Care is set up cooperatively between the Federal and State governments and administered by the West Virginia Department of Health & Human Resources.

It is a medical service which is covered by the State's Medicaid Program. Payment for care is made to nursing homes which meet Title XIX (Medicaid) standards for the care provided to eligible recipients. In order to qualify for Nursing Home Care, an individual must meet financial and medical eligibility criteria.

III. PARTICIPANTS:

_____, Claimant

_____, Claimant's Brother

_____, MPOA & Claimant's Sister

_____, Claimant's Sister-in-Law

_____, Administrator, _____ Center

_____, Social Worker, _____ Center

It should be noted that this hearing was held at the facility.

Presiding at the Hearing was Margaret M. Mann, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question to be decided is if [REDACTED] Center is correct in its proposal to involuntarily discharge the Claimant.

V. APPLICABLE POLICY:

Code of Federal Regulations §42 CFR 483.12
WVDHHR Common Chapters Manual, 780.D.1

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Claimant's Exhibit:

Exhibit-1 Notice of Discharge dated January 3, 2007

Respondent's Exhibits:

Fayette Nursing & Rehabilitation-1 Notice of Discharge dated January 3, 2007
Fayette Nursing & Rehabilitation-2 Doctor's Progress Notes dated 01/11/2007
Fayette Nursing & Rehabilitation-3 Doctor's Progress Notes dated 11/24/2006
Fayette Nursing & Rehabilitation-4 Doctor's Progress Notes dated 10/20/2006
Fayette Nursing & Rehabilitation-5 Care Plan
Fayette Nursing & Rehabilitation-6 PAS Form dated 10/23/2006

VII. FINDINGS OF FACT:

- 1) On or about January 3, 2007, the Claimant was notified (Exhibits-C-1 & R-1) that [REDACTED] Center was initiating involuntary discharge proceedings against the Claimant as the resident's health had improved sufficiently that the resident no longer needs the services provided by the facility. The Claimant was to be discharged on February 1, 2007 to [REDACTED] WV. The letter went on to explain the bedhold policy.
- 2) The physician's progress notes dated January 11, 2007 read in part under Impression: Diarrhea – Otherwise doing fine – actually too good for this level of care. Previous impressions on October 20, 2006 and November 24, 2006 show the condition of the Claimant is stable. (R-2 through R-4)
- 3) Testimony from the Nursing Home Administrator revealed that the care plan shows that the Claimant needs minimal set-up and minimal help with grooming and care. Showers are given twice a week and bed side bathing daily. They gather supplies and he uses them independently. He can ambulate throughout the facility using his quad cane but uses his privately owned wheelchair for convenience. He eats independently. He has had an increase in diarrhea and medication has been adjusted. There is not much they do for the Claimant other than prepare

his meals and wash his clothes. He smokes with supervision. They give his medication to him but the Claimant knows what medication he is suppose to have and the time the medication is due. It is felt his level of care could be provided at a different level other than nursing home. They found two other locations, [REDACTED] and [REDACTED] Home, for placement.

- 4) The most recent medical evaluation dated October 23, 2006 found that the Claimant does not meet the medical requirements for long term care. (Exhibit R-5)
- 5) Testimony from the Social Worker revealed that the Claimant was admitted to the facility with an initial PAS on September 19, 2006. By September 29 he was already up walking in his room. He previously lived alone and had problems with alcohol. The Social Worker did find a placement at [REDACTED] in [REDACTED]. She also obtained a list of possible places, licensed and unlicensed, from the regional ombudsman. Some of the placements were very expensive. She was given the name of the WV [REDACTED]. They took the Claimant to visit the facility and it was very nice. He has been accepted at the [REDACTED]'s home, they currently have vacancies and will accept his funding. They are not advocating that the Claimant live on his own. They do not feel the Claimant needs nursing home level of care.
- 6) Testimony from the Claimant revealed that he likes it at [REDACTED] Center. He does not want to go to the placements the facility has found for him. His brother testified that the Claimant is not capable of caring for himself.
- 7) The Code of Federal Regulations, found at § 42 CFR 483.12(a) provides regulatory guidelines regarding admission, transfer and discharge rights for the Medicaid, Long-Term Care Program. This regulation states:
 - (1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.
 - (2) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless____
 - (i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
 - (ii) 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;
 - (iii) The safety of individuals in the facility is endangered;
 - (iv) The health of individuals in the facility would otherwise be endangered;
 - (v) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.
 - (vi) The facility ceases to operate.
- 8) The Code of Federal Regulations, 42 ' CFR ' 483.12(a)(4&6), addressed written notification regarding transfer and discharge and states that notice 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 that the resident has the right to appeal the action to the State;
 - (v) The name, address and telephone number of the State long term care ombudsman;
 - (vi) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and
 - (vii) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.
- 9) The Code of Federal Regulations, 42 ' CFR ' 483.12(a)(7) - Orientation for transfer or discharge – states that a facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.
- 10) WV Department of Health and Human Resources Common Chapters Manual, Chapter 780.D.1 states - If the policy was misapplied or other incorrect decision was made, the State Hearing Officer will reverse.

VIII. CONCLUSIONS OF LAW:

- 1) The regulations that govern the Medicaid Long-Term Care Program state that a resident can be transferred / discharged from a nursing facility when the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility. In this case, it has been determined that the Claimant is no longer medically eligible for LTC care.
- 2) In addition, the regulations that govern the Medicaid Long-Term Care Program specify the requirements that must be met in regard to written notification for transfer and discharge. These requirements include a statement that the resident has the right to appeal the action to the State, information regarding the ombudsman, and specific rights for residents with developmental disabilities and those residents who are mentally ill. The discharge notice entered into evidence in this hearing did not meet the above criteria.
- 3) Whereas the evidence submitted by [REDACTED] Center fails to meet regulatory requirements, the involuntary discharge recommendation cannot be affirmed.

IX. DECISION:

It is the decision of the State Hearing Officer to **reverse** the proposal of [REDACTED] Center to discharge the Claimant from its facility based on the notice dated January 3, 2007. The Claimant must receive proper notification prior to discharge.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 6th Day of March, 2007.

**Margaret M. Mann
State Hearing Officer**