



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Office of Inspector General
Board of Review
Post Office Box 1736
Romney, WV 26757**

**Joe Manchin III
Governor**

**Martha Yeager Walker
Secretary**

March 20, 2007

Dear Mr. _____:

Attached is a copy of the findings of fact and conclusions of law on your hearing held February 26, 2007. Your hearing request was based on the [REDACTED] Care facility's proposal to discharge you from their 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.

Eligibility for the Long Term Care program is based on current Federal regulations. Some of these regulations state as follows: Discharge is appropriate if the resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

The information, which was submitted at your hearing, revealed that you have refused to pay your resource amount and the facility is following discharge policies as outlined in Federal Regulations.

It is the decision of the State Hearings Officer to uphold the actions of the long-term care facility to continue discharge procedures.

Sincerely,

Sharon K. Yoho
State Hearing Officer
Member, State Board of Review

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

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

_____,

Claimant,

v.

Action Number: 07-BOR-652

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 26, 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 26, 2007 on a timely appeal, filed January 24, 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's witnesses:

_____, claimant

_____, claimant's sister

Respondent's witnesses:

_____ Administrator, _____

[REDACTED], Billing processes, [REDACTED]
[REDACTED] Administrator Marketing, [REDACTED]
[REDACTED] Social Worker, [REDACTED]
[REDACTED] Care Planning Coordinator, [REDACTED]
[REDACTED] Director of Nursing, [REDACTED]
[REDACTED] Physical Therapist, [REDACTED]

Presiding at the Hearing was Sharon K. Yoho, State Hearing Officer and a member of the State Board of Review.

IV. QUESTIONS TO BE DECIDED:

The question(s) to be decided is whether [REDACTED] Care was correct in their decision to process a discharge from the long-term care facility.

V. APPLICABLE POLICY:

Federal Regulations CFR § 42-483.12

VI. LISTING OF DOCUMENTARY EVIDENCE ADMITTED:

Respondent's Exhibits:

D-1 Notice of Contribution to cost of care, received December 2006

D-2 Notice of Contribution to cost of care, received December 2006

Claimants' Exhibits:

C-1 Hearing request received January 24, 2007

VII. FINDINGS OF FACT:

- 1) The claimant was admitted to [REDACTED] on August 9, 2006 following a leg amputation.
- 2) At the time of admission, the billing department of [REDACTED] believed that the claimant was an active Medicaid recipient and that they would be receiving payment from the WV Department of Health and Human Resources (DHHR) for a portion of his care. The admissions personnel testified that the claimant was advised during admission that he would have to pay for part of his care. The claimant testified that he did not know that he would have to pay a resource amount.

- 3) Payments from DHHR did not come in to the facility for August through November. On December 1, 2006, the [REDACTED] Social Worker ordered a prosthetic device for the claimant and was advised by the provider that the claimant's Medicaid benefits had expired.
- 4) The facility then began contacting DHHR and the claimant's sister to determine why the Medicaid benefits had ended and to try to get the benefits reinstated. DHHR advised them that they had mailed a notice to the claimant's home in August 2006 to advise him that his Medicaid benefits were due for a review. The claimant was in the hospital or [REDACTED] during this time and his children who were residing at his home did not give him the notice. He did not complete his review and his Medicaid benefits were terminated effective for September 1, 2006.
- 5) DHHR reopened the claimant's Medicaid benefits in December 2006 and backdated his coverage to include months September forward. DHHR sent a notice (D-1) advising the Administrator of [REDACTED] of the claimant's calculated resource amount of \$926. per month. When [REDACTED] realized that, the month of August was not included, they contacted DHHR and this prompted a corrected notice (D-2) which included August. The resource amount calculated for August was \$687.03. Billing personnel testified that she had believed the lack of payment from DHHR had been due to billing process problems so therefore she did not feel the need to contact DHHR to inquire about the claimant's Medicaid status.
- 6) On January 15, 2007, [REDACTED] administrator and billing personnel had a meeting with the claimant and advised him of his monthly resource amount and that he now owed in excess of \$5,000. The claimant advised them that he could not pay his monthly resource amount due to his mortgage payment and other payments to keep up his home where his high school age son, his grown daughter and two grandchildren reside. He did agree to pay for his cable bill at the facility and did pay a partial amount toward that.
- 7) The facility calculated an amount, which the claimant would have to pay monthly which included the monthly resource amount of \$926. plus \$130. which would go toward the arrearage amount owed. The claimant receives \$1188. in Social Security benefits and hopes to be able to return to work soon. He advised them that he would agree to pay \$50. per month for his care. The administration advised the claimant on January 16, 2007 of their plans to discharge him due to his refusal to pay for his care.
- 8) At the time of this hearing, the facility has received payment from DHHR, which has not covered the full cost of the claimant's care.
- 9) Testimony was offered to indicate that the claimant might be nearing a level of improvement, which could allow him to return to his home with the help of community services. The facility is in the process of helping to set up the community services to assist the claimant once the proposed discharge takes place.

10) Federal Regulations CFR §42-483.12 Admission, transfer and discharge rights

(1) 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.

VIII. CONCLUSIONS OF LAW:

- 1) Federal regulations provide that a certified facility can discharge a resident if he has failed after reasonable and appropriate notice, to pay for a stay at the facility. The claimant was advised on January 15, 2006 of the amount that he owed and the monthly amount, which he was required to pay. It is clear that he is refusing to pay his portion of the cost of his care. At the time of this hearing, the claimant had only paid some of his cable bill, but none of the cost of his care, which clearly shows that he is following through on his plan to not pay.
- 2) It is apparent that the facility has demonstrated a lack of proper business practice which contributed to months of care being provided without insuring that funding from DHHR or the resident would be received. The facility however is following Federal regulations in their plans to discharge the claimant due to his refusal to pay for his portion the care.

IX. DECISION:

Evidence and testimony supports that the claimant has not paid and has refused to pay for his care. I rule to **uphold** the proposed actions of [REDACTED] to continue their process to discharge the claimant from their facility.

X. RIGHT OF APPEAL:

See Attachment

XI. ATTACHMENTS:

The Claimant's Recourse to Hearing Decision

Form IG-BR-29

ENTERED this 20th Day of March 2007.

Sharon K. Yoho
State Hearing Officer