



March 31, 2025

REMOVED

RE: **REMOVED** v. MARMET CENTER
ACTION NO.: 25-BOR-1388

Dear **REMOVED**:

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 Human Services. 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,

Eric L. Phillips
State Hearing Officer
Member, State Board of Review

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

cc: Hannah Sayre, Administrator

**WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW**

REMOVED

Resident,

v.

Action Number: 25-BOR-1388

MARMET CENTER,

Facility.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for **REMOVED**. This hearing was held in accordance with the provisions found in Chapter 700 of the Office of Inspector General Common Chapters Manual. This fair hearing was convened on March 20, 2025, on appeal filed February 18, 2025.

The matter before the Hearing Officer arises from the January 21, 2025 decision by Facility to propose an involuntary discharge of the Resident due to Resident no longer needing the services provided by the Facility, the endangerment of the safety of other individuals in the Facility due to the clinical or behavioral states of the Resident and non-payment.

At the hearing, the Facility appeared by **REMOVED** Director of Nursing for **REMOVED**. Appearing as a witness for the Facility was **REMOVED** Director of Rehabilitation for **REMOVED**. The Resident appeared pro se. All witnesses were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 Notice of Involuntary Discharge dated January 21, 2025
- F-2 Resident's Medical Records from **REMOVED**

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 was admitted to the [REDACTED] on December 28, 2023. (Exhibit F-2)
- 2) The Resident was admitted due to a cerebral infarction or stroke. (Exhibit F-2)
- 3) The Resident also presents diagnoses of post-traumatic stress disorder, insomnia, dysphagia and muscle weakness. (Exhibit F-2)
- 4) The Resident completed physical and occupational therapy at the Facility.
- 5) The Resident has an outstanding balance of \$11,710.00 with the Facility. (Exhibit F-2)
- 6) The Resident has a monthly financial responsibility of \$1404.00 to the Facility. (Exhibit F-2)
- 7) The Resident receives Medicaid assistance to assist with his financial responsibility. (Exhibit F-2)
- 8) The Resident has not made a payment to the Facility since October 30, 2024.
- 9) On December 28, 2023, a Pre-Admission Screening (PAS) assessment completed with the Resident which identified 8 functional deficits to require a nursing home level of care. (Exhibit F-2)
- 10) On January 15, 2025, a PAS assessment completed with the Resident which identified 0 functional deficits to require a nursing home level of care. (Exhibit F-2)
- 11) On February 16, 2024, the Resident exhibited sexually inappropriate behavior to female staff. (Exhibit F-2)
- 12) On January 17, 2025, the Resident threatened the Facility Administrator verbalizing “he hopes the center admin[sic] dies.” (Exhibit F-2)
- 13) During his admission, the Resident suffered a loss of his home due to fire.
- 14) On January 17, 2025 and January 24, 2025, the Facility requested law enforcement to the site due to safety concerns of Resident towards himself, other residents and staff. (Exhibit F-2)
- 15) On January 21, 2025, the Facility issued a Notice of Involuntary Discharge to the Resident which advised him of a proposed discharge of February 20, 2025, from the [REDACTED] to the **REMOVED** Men’s Shelter due to his improved health which no longer required services provided by the facility, the endangerment of the safety and health of other individuals in the facility due to his clinical or behavioral status and non-payment of his stay. (Exhibit F-1)

- 16) The Resident is cooperating with Take Me Home West Virginia to secure a residence.

APPLICABLE POLICY

Code of Federal Regulations 42 CFR § 483.15(c)

(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.

(ii) The facility may not transfer or discharge the resident while the appeal is pending, pursuant to [§ 431.230 of this chapter](#), when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to [§ 431.220\(a\)\(3\) of this chapter](#), unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

(2) ***Documentation.*** 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 [paragraph \(c\)\(1\)\(i\)\(C\)](#) or [\(D\)](#) of this section.

(iii) Information provided to the receiving provider must include a minimum of the following:

(A) Contact information of the practitioner responsible for the care of the resident

(B) Resident representative information including contact information.

(C) Advance Directive information.

(D) All special instructions or precautions for ongoing care, as appropriate.

(E) Comprehensive care plan goals,

(F) All other necessary information, including a copy of the resident's discharge summary, consistent with [§ 483.21\(c\)\(2\)](#), as applicable, and any other documentation, as applicable, to ensure a safe and effective transition of care.

(3) **Notice before transfer.** Before a facility transfers or discharges a resident, the facility must—

(i) Notify the resident and the resident's representative(s) of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. The facility must send a copy of the notice to a representative of the Office of the State Long-Term Care Ombudsman.

(ii) Record the reasons for the transfer or discharge in the resident's medical record in accordance with [paragraph \(c\)\(2\)](#) of this section; and

(iii) Include in the notice the items described in [paragraph \(c\)\(5\)](#) of this section.

(4) *Timing of the notice.*

(i) Except as specified in [paragraphs \(c\)\(4\)\(ii\)](#) and [\(8\)](#) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice must be made as soon as practicable before transfer or discharge when—

(A) The safety of individuals in the facility would be endangered under [paragraph \(c\)\(1\)\(i\)\(C\)](#) of this section;

(B) The health of individuals in the facility would be endangered, under [paragraph \(c\)\(1\)\(i\)\(D\)](#) of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under [paragraph \(c\)\(1\)\(i\)\(B\)](#) of this section;

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under [paragraph \(c\)\(1\)\(i\)\(A\)](#) of this section; or

(E) A resident has not resided in the facility for 30 days.

(5) *Contents of the notice.* The written notice specified in [paragraph \(c\)\(3\)](#) of this section 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 of the resident's appeal rights, including the name, address (mailing and email), and 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;

(v) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;

(vi) For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 ([Pub. L. 106-402](#), codified at [42 U.S.C. 15001](#) *et seq.*); and

(vii) For nursing facility residents with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act.

(6) ***Changes to the notice.*** If the information in the notice changes prior to effecting the transfer or discharge, the facility must update the recipients of the notice as soon as practicable once the updated information becomes available.

(7) ***Orientation for transfer or discharge.*** A facility must provide and document sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility. This orientation must be provided in a form and manner that the resident can understand.

(8) ***Notice in advance of facility closure.*** In the case of facility closure, the individual who is the administrator of the facility must provide written notification prior to the impending closure to the State Survey Agency, the Office of the State Long-Term Care Ombudsman, residents of the facility, and the resident representatives, as well as the plan for the transfer and adequate relocation of the residents, as required at [§ 483.70\(k\)](#).

(9) ***Room changes in a composite distinct part.*** Room changes in a facility that is a composite distinct part (as defined in [§ 483.5](#)) are subject to the requirements of [§ 483.10\(e\)\(7\)](#) and must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.

DISCUSSION

On January 21, 2025, the Facility issued notice to the Resident informing him of his proposed involuntary discharge from the [REDACTED], effective February 20, 2025, or thirty days from the date of the notice. The Facility cited in the notice (Exhibit F-1) that the discharge was for four specific reasons for discharge which included:

Pursuant to Code of Federal Regulation 42 §483.15 c(i)(B) which states 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.

Pursuant to Code of Federal Regulation 42 §483.15 c(i)(C) which states, the safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident.

Pursuant to Code of Federal Regulation 42 §483.15 c(i)(D) which states, the health of individuals in the facility would otherwise be endangered.

Pursuant to Code of Federal Regulation 42 §483.15 c(i)(E) which states, 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. Nonpayment 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 the facility, the facility may charge a resident only allowable charges under Medicaid. WV Pre-Admission Screening Assessment completed on January 15, 2025 was denied stating nursing home placement is not approved for Medicaid payment.

The Resident protests the proposed discharge citing that the Facility failed to specifically identify an appropriate reason for discharge and that the proposed discharge to the [REDACTED] Men's Shelter was inappropriate. The Facility must demonstrate by a preponderance of the evidence that proposed involuntary discharge of the Resident was warranted and that it properly provided adequate notice of the involuntary discharge.

Notice-On January 21, 2025, the Facility issued the Resident a proposed notice of involuntary discharge from the Facility to the [REMOVED] Men's Shelter on February 20, 2025. This notice lists four specific reasons for discharge; improved health, the concern for safety and health of other residents and his non-payment for his stay. Additionally, the notice contains his appeal rights and the contact information for the Office of the State Long-Term Care Ombudsman. The Resident contends that he was improperly notified of the proposed discharge because the Facility failed to cite or mark a specific reason for the discharge on the notice. Federal regulations list six appropriate reasons of the discharge of a resident. The Facility identified four reasons for the proposed involuntary discharge. While the notice may be broad and cites federal regulations, there is sufficient information outlined in the notice to properly notify the Resident of the discharge. Therefore, the Resident was properly notified of his proposed involuntary discharge from the Facility.

Resident's Health Has Improved, No Longer Needs Services Provided by the Facility: The Resident suffered a cerebral infarction which resulted in his admission to the [REDACTED] on December 28, 2023. On the same date, a PAS assessment was completed with the Resident by an attending physician which identified 8 functional deficits to support the Resident's need for a nursing home level of care. A current PAS assessment of January 15, 2025 identified 0 functional deficits and that the Resident no longer required a nursing home level of care. This information

was recorded in the Resident's medical records. Testimony from Facility representatives indicated that the Resident completed multiple sessions Occupational and Physical Therapy at the Facility. Testimony indicated that the Resident can independently transfer and ambulate without physical assistance. The Resident contends that the proposed discharge location of the **REMOVED** Shelter is inappropriate because the shelter does not accept disabled individuals. The Resident indicated that he could ambulate with the assistance of supporting devices and can operate a wheelchair independently.

There is no question that the Resident suffers from daily health challenges. However, the information, including documentation from medical professionals that the Resident's health has improved from requiring 8 functional deficits for a nursing home level of care to 0 functional deficits in which he no longer required a nursing home level of care. Because this information outlines an improvement in the Resident's overall health and documents that he no longer requires a nursing home level of care, the Facility was correct in its decision to propose an involuntary discharge for improved health.

Endangerment of Health and Safety of other Individuals due to Clinical or Behavioral Status:

The Resident's medical records indicate that the Resident has a history of PTSD and exhibits aggressive behaviors. Records note that the Resident has demonstrated some sexually inappropriate behavior towards staff. Facility records document that the law enforcement has been called to the Facility regarding the Residents own safety and other residents due to his behaviors. The Resident purported incidents regarding his wheelchair damaging his room but denied any physical aggression. Based on an evidentiary review, the Facility has relied upon law enforcement in dealings with the Resident; therefore, the Facility was correct in its decision to propose an involuntary discharge for endangerment of health and safety of other individuals.

Non-Payment-The Resident is a recipient of Medicaid assistance. The Resident's monthly patient responsibility amount increased from \$1368.00 to \$1404.00 due to an increase in income. The Resident owes a total account balance of \$11,710.00 to the Facility. Testimony indicated that the Resident last paid a total of \$1000.00 to the Facility on October 30, 2024. Records document that the Facility has attempted to set up a payment plan with the Resident but has been unsuccessful noting the Resident's refusal to cooperate and his demonstration of verbal aggression. The Facility noted in their records several attempts to contact either telephonically or in person with the Resident. Based on this information, reasonable and appropriate notice has been issued to the Resident and he has failed to provide payment for his stay. Therefore, the Facility was correct in its decision to propose an involuntary discharge for non-payment.

CONCLUSIONS OF LAW

- 1) Federal regulations require that a transfer or discharge of a Resident is appropriate when the Resident's needs cannot be met in the Facility.
- 2) Evidence reveals that the Resident's health improved that he no longer requires a nursing home level of care.

- 3) Federal regulations require that a transfer or discharge of a Resident is appropriate when the safety and health of other individuals in facility is endangered due to the clinical or behavioral status of the Resident.
- 4) Evidence reveals that the Facility required assistance from law enforcement due to the behavioral issues of the Resident.
- 5) Federal regulations require that a transfer or discharge of a Resident is appropriate after the Resident has failed, after reasonable and appropriate notice, to pay for a stay at the Facility.
- 6) Evidence reveals that the Resident maintains an outstanding balance and refuses to cooperate with the Facility to set up a payment plan for the remaining balance.
- 7) The decision of the Facility to propose an involuntary discharge of the Resident is affirmed.

DECISION

It is the decision of the State Hearing Officer to uphold the decision of the Facility to propose an involuntary discharge of the Resident.

ENTERED this ____ day of March 2025.

Eric L. Phillips
State Hearing Officer