



April 1, 2025

[REDACTED]

RE: [REDACTED] v. [REDACTED]
ACTION NO.: 25-BOR-1528

Dear Ms. [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 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,

Kristi Logan
Certified State Hearing Officer
Member, State Board of Review

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

cc: [REDACTED]

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

[REDACTED],

Resident,

v.

Action Number: 25-BOR-1528

[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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on March 26, 2025.

The matter before the Hearing Officer arises from the February 21, 2025, decision by the Facility to involuntarily discharge the Resident from [REDACTED].

At the hearing, the Facility appeared by [REDACTED], Administrator. Appearing as a witness for the Facility was [REDACTED], Business Office. The Resident appeared *pro se*. The witnesses were placed under oath and the following documents were admitted into evidence.

Facility's Exhibits:

None

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 [REDACTED], hereinafter referred to as Facility, on October 2, 2024, as a private pay patient.
- 2) The Resident's son, [REDACTED], paid \$12,450 to the Facility upon the Resident's admission.
- 3) On December 4, 2024, Mr. [REDACTED] paid \$16,700 to the Facility on behalf of the Resident.
- 4) The two payments made by Mr. [REDACTED] were applied to the Resident's October and November 2024 bill at the Facility.
- 5) The Facility sent a letter to Mr. [REDACTED] on December 12, 2024, advising him of the Resident's outstanding balance.
- 6) The Facility left a voicemail message with Mr. [REDACTED] on December 13, 2024, advising him of the Resident's outstanding balance.
- 7) The Facility left a voicemail message with Mr. [REDACTED] on January 10, 2025, and sent a letter advising him that payment for the Resident was needed.
- 8) The Facility spoke with Mr. [REDACTED] on January 15, 2025, who advised that he had mailed a \$6,000 check for the Resident's bill and he would apply for Long Term Care Medicaid benefits for the Resident as her funds were getting low.
- 9) The Facility attempted to contact Mr. [REDACTED] by phone on January 22, 2025, January 24, 2025, and February 13, 2025, regarding the Resident's outstanding balance but was unable to speak with him or leave a voicemail message.
- 10) The Facility sent letters to Mr. [REDACTED] on January 24, 2025, February 7, 2025, and February 14, 2025, requesting payment for the Resident's account.
- 11) The Facility did not receive the \$6,000 payment that was promised by Mr. [REDACTED].
- 12) On February 21, 2025, the Facility hand-delivered a 30-Day Notice of Discharge to the Resident and sent a copy of the notice certified mail to Mr. [REDACTED].
- 13) On March 17, 2025, the Facility assisted the Resident in applying for Long Term Care Medicaid benefits when it discovered that Mr. [REDACTED] had not applied on the Resident's behalf.
- 14) The Resident's outstanding balance with the Facility is \$60,072.31.

APPLICABLE POLICY

Code of Federal Regulation – 42 CFR §483.15(c) provide that the nursing facility administrator or designee must permit each resident to remain in the facility, and not be transferred or discharged from the facility unless one of the following conditions is met:

(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, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility, 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 -
- The safety of individuals in the facility would be endangered under paragraph (c)(1)(i)(C) of this section;
 - The health of individuals in the facility would be endangered, under paragraph (c)(1)(i)(D) of this section;
 - The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (c)(1)(i)(B) of this section;

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

DISCUSSION

Federal regulations permit the involuntary discharge of a resident if 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. The Facility initiated the discharge process for the Resident due to an outstanding balance owed for her care.

The Resident testified that she was unaware that her health insurance would not pay for her stay at the nursing facility or that she was admitted as a private pay patient. The Resident stated she is in the process of applying for Long Term Care Medicaid benefits and has requested copies of her bank statements for the Medicaid application. The Resident contended that she is unable to care for herself and she cannot afford to pay for in-home assistance.

The Facility testified that the Resident's son has refused to pay her outstanding balance and will not answer multiple phone calls and letters requesting payment. The Facility stated the Resident has capacity and has access to her bank account but has refused to write a check for her outstanding bill.

Federal regulations stipulate that when the facility transfers or discharges a resident due to nonpayment, the facility must ensure that the transfer or discharge is documented in the resident's medical record. The Facility failed to provide any evidence for the hearing, including the Resident's medical record documenting the reason for her proposed discharge.

Whereas the Facility failed to provide the Resident's medical record documenting the reason for her involuntary discharge as required by federal regulations, the Facility's proposed discharge of the Resident cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Federal regulations permit the involuntary discharge of a resident if 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.
- 2) The resident's medical record must document the reason for an involuntary discharge.
- 3) The Facility failed to provide the Resident's medical record documenting the reason for her involuntary discharge.
- 4) The Facility failed to adhere to federal regulations in the proposed discharge of the Resident.

DECISION

It is the decision of the State Hearing Officer to **reverse** the proposal of [REDACTED] in the involuntary discharge of the Resident from its facility.

ENTERED this 1st day of April 2025.

Kristi Logan
Certified State Hearing Officer