



March 20, 2024

[REDACTED]

RE: [REDACTED]

BOR ACTION NO.: 24-BOR-1423

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 Human Services. These same laws and regulations are used in all cases to ensure 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]

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

██████████,

Resident,

v.

BOR Action #24-BOR-1423

████████████████████,

Facility.

DECISION OF STATE HEARING OFFICER

INTRODUCTION

This is the decision of the State Hearing Officer resulting from a fair hearing for ██████████. This hearing was held in accordance with the provisions found in Chapter 700 of the West Virginia Common Chapters Manual. This fair hearing was convened on March 12, 2024, on an appeal filed February 14, 2024.

The matter before the Hearing Officer arises from the January 22, 2024 decision by the Facility to propose an involuntary discharge/transfer of the Resident.

At the hearing, the Facility appeared by ██████████, Director of Finance. Appearing as witnesses for the Facility were ██████████, Administrator, and ██████████, Social Worker. The Resident was not present but was represented by her son ██████████, and her daughter, ██████████. All witnesses were placed under oath and the following documents were admitted into evidence.

Facility's Exhibits:

- F-1 Preauthorization/Prior Authorization Worksheet; ██████████ Financial Policy sheet signed and dated May 17, 2021; Covered and Non-Covered Services & Charges Medicare form signed and dated May 17, 2021; ██████████ Letter dated June 2, 2021; ██████████ Resident Ledger Report May 17, 2021 – March 31, 2024; ██████████ Resident Rates Report May 17, 2021 – March 31, 2024; WV Department of Health & Human Resources Notification of Medicaid and/or WVCHIP and Medicare Premium Assistance decision dated June 22, 2021; WV Department of Health & Human Resources Notification of Medical Assistance (ED12) patient responsibility dated July 16, 2021; WV Department of Health & Human Resources Notification of Medicaid and/or WVCHIP decision dated July 14, 2021; WV Department of Health & Human Resources Notification of Medicaid and/or WVCHIP decision dated July 14, 2021; WV Department of Health & Human Resources Notice of Contribution to the Cost of Care (DFA-NH-3) dated July 15, 2021; Medicare Appeal notice and decision dated July 26, 2021; WV Department of

Health & Human Resources Medical Assistance notice (EDR2) dated January 31, 2022; WV Department of Health & Human Resources Medicare Premium Assistance notice of decision dated February 18, 2022; WV Department of Health & Human Resources Medical Assistance notice (EDR2) dated August 8, 2022; WV Department of Health & Human Resources Medical Assistance notice (EDR2) dated January 29, 2024; email from [REDACTED] to [REDACTED] dated August 10, 2022; email from [REDACTED] to [REDACTED] dated September 10, 2022; email from [REDACTED] to [REDACTED] dated October 14, 2022; WV Department of Health & Human Resources Medical Assistance notice (EDR2) dated January 30, 2023; WV Department of Health & Human Resources Medical Assistance notice (EDR2) dated November 15, 2023; WV Department of Health & Human Resources Medical Assistance notice (EDR2) dated January 29, 2024

F-2 January 22, 2024 letter from [REDACTED] to [REDACTED]

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 Facility on May 17, 2021.
- 2) The Resident’s son, [REDACTED], is her attorney-in-fact.
- 3) The Resident receives Medicaid to financially assist with her cost of care at the Facility.
- 4) The Resident’s patient responsibility has increased over the course of her stay:
 - June 2021 = \$572.60
 - July 1, 2021 – July 31, 2021 = \$2,454.26
 - August 2021 – February 22 = \$2,515.26
 - March 2022 – August 2022 = \$3,061.83
 - February 2023 – February 2024 = \$3,282.16(Exhibit F-1)
- 5) The full amount of the patient’s responsibility each month has not been paid, creating an outstanding balance of \$21,880.41, to date. (Exhibit F-1)
- 6) [REDACTED] does not contest the fact that an outstanding balance is owed to the Facility.

- 7) On January 22, 2024, the Facility issued a demand for the Resident's outstanding balance citing the possibility of discharge of the Resident in 30 days if the demand was not met. (Exhibit F-2)
- 8) There was no other notice of discharge/transfer issued to the Resident or [REDACTED]
- 9) The January 22, 2024 letter did not include the location to which the Resident is to be transferred or discharged. (Exhibit F-2)
- 10) The January 22, 2024 letter did not include 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, including information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request. (Exhibit F-2)
- 11) The January 22, 2024 letter did not include the address (mailing and email) of the Office of the State Long-Term Care Ombudsman. (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 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)(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.

42 CFR 483.15(c)(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.

42 CFR 483.15(c)(5), Contents of the notice, in part: 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

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. The notice must also include information regarding the resident's appeal rights, including the name, address (mailing and email), and telephone number of the appeals entity. The name, address (mailing and email), and telephone number of the Office of the State Long-Term Care Ombudsman (hereinafter referred to as the "Ombudsman's office") must also be included in the 30-day discharge notice. Additional federal regulations require documentation be recorded in the Resident's medical record regarding the specific reason for the resident's discharge/transfer, regardless of the reason for discharge.

The Facility must prove by a preponderance of evidence that it followed all federal regulations in its January 22, 2024 decision to involuntarily discharge/transfer the Resident.

The Resident was admitted to the Facility on May 17, 2021. Medicaid pays a portion of the Resident's stay. The Resident's monthly resource payment has increased since her admission. ██████ admitted to not making full payments of the Resident's resource amount and acknowledges that there is an accrued balance. As of March 1, 2024, the outstanding balance owed to the facility is \$21,880.41. ██████ testified that he was under the assumption that he was only required to pay what he could towards the resource amount and that the Facility would "write off" the rest. He argued that once he paid his mother's other obligations, such as her mortgage loan, there was not enough left over to make the full monthly resource payment. The Facility's administrator, ██████, explained that the Facility does not "write off" amounts owed to the Facility. ██████ testified that he spoke to ██████ regarding the amounts he needed to pay.

Although it is not contested that the Resident has an outstanding balance owed to the Facility, the Facility must show that the Resident failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the Facility. The Facility presented testimony regarding conversations with ██████ regarding the need to pay the full resource amount. Additionally, the Facility submitted into evidence emails to ██████ dated August 10, September 20, and October, 2022 requesting full payment of the Resident's resource amount. However, because the submitted documents are over 20 months old, it is questionable as to whether they meet the reasonable and appropriate notice standard. It is noted that the January 22, 2024 letter (which the Facility asserts is their 30-day notice of discharge) sent to ██████ alludes to letters

for payment, these were not provided at the hearing. Because there were no current documents entered into evidence, the Facility has not shown by a preponderance of evidence that it met the reasonable and appropriate notice standard required by federal regulations.

The Facility's January 22, 2024 letter fails to contain all the information necessary to meet the notice requirement for involuntary discharge/transfer of a Resident as required by federal regulations. The January 22, 2024 letter did not contain the location for discharge/transfer, the complete information of the Ombudsman's office, or the required appeals information.

Federal regulations require that the reason for a Resident's discharge/transfer be documented in the Resident's medical record, regardless of the reason for the discharge/transfer. 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 regulations in its decision to involuntarily discharge/transfer the Resident, 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 Facility failed to show by a preponderance of evidence that it 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 be included in the resident's medical record.
- 4) There was no evidence presented that the reason for the Resident's discharge was documented in her medical record.
- 5) Federal regulations mandate the location of the discharge/transfer be contained in the 30-day Notice letter.
- 6) The Facility failed to provide the location of the discharge/transfer in the January 22, 2024 letter.
- 7) A 30-day notice of discharge/transfer must contain the address (mailing and email) of the Ombudsman's office.
- 8) The January 22, 2024 letter failed to contain the complete information for the Ombudsman's office.

- 9) A 30-day notice of discharge/transfer must contain information regarding 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.
- 10) The January 22, 2024 letter failed to contain the appeals information required by federal regulations.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Facility's January 22, 2024 proposal to transfer/discharge the Resident.

ENTERED this 20th day of March 2024.

Lori Woodward, Certified State Hearing Officer