



STATE OF WEST VIRGINIA
OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

Sherri A. Young, DO, MBA, FAAFP
Cabinet Secretary

Ann Vincent-Uriling
Interim Inspector General

March 7, 2024

[REDACTED]

RE: [REDACTED]
ACTION NO.: 23-BOR-3709

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 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,

Todd Thornton
State Hearing Officer
Member, State Board of Review

Encl: Resident's Recourse to Hearing Decision
Form IG-BR-29

cc: [REDACTED]

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

[REDACTED]

Resident,

v.

Action Number: 23-BOR-3709

[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 January 30, 2024, on a timely appeal filed December 21, 2023.

The matter before the Hearing Officer arises from the November 22, 2023 decision by the Facility to discharge the Resident.

At the hearing, the Facility appeared by [REDACTED]. Appearing as witnesses for the Facility were [REDACTED]. The Resident was self-represented. Appearing as a witness for the Resident was [REDACTED]. All witnesses were sworn and the following documents were admitted into evidence.

EXHIBITS

Facility's Exhibits:

- F-1 Facility records regarding the Resident
Resident Schedules

- F-2 Facility records regarding the Resident
Physical Therapy Notes
Occupational Therapy Notes

- F-3 [REDACTED] Center [REDACTED] medical records regarding the
Resident's May 2023 inpatient registration

General Medical Progress Notes
Medication Administration Records
History and Physical Examination
Physician Determination of Capacity, dated May 11, 2023
Consent and Disclosure forms
Additional medical records
Notice of Transfer or Discharge, dated November 22, 2023
Pre-Admission Screening (PAS) form, dated May 8, 2023
Pre-Admission Screening (PAS) form, dated November 21, 2023
Additional medical records

- F-4 Facility records regarding the Resident
Care Plan Review documents
- F-5 Facility records regarding the Resident
Diagnosis Report
Progress Notes
- F-6 Facility records regarding the Resident
Resident Schedules

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] ("Facility"), a nursing facility, on May 9, 2023.
- 2) The Resident transferred to the Facility following a May 2023 inpatient stay at [REDACTED] (Exhibit F-3).
- 3) A Pre-Admission Screening ("PAS") of the Appellant was completed on May 8, 2023, and the medical findings were recorded on a PAS document (Exhibit F-3).
- 4) A Physician's Determination of Capacity (Exhibit F-3) form was completed regarding the Resident on May 11, 2023 by [REDACTED], certifying that [REDACTED] is "...the patient's attending physician..."
- 5) At the time of the May 2023 PAS, the Resident was assessed with eight (8) deficits in area of care needs related to nursing facility admission (Exhibit F-3).

- 6) A Pre-Admission Screening (“PAS”) of the Resident was completed on November 21, 2023, and at that time the Appellant was assessed with zero deficits (Exhibit F-3).
- 7) On the November 2023 PAS (Exhibit F-3, Item #38, *Physician Recommendations*), ██████ responded in the affirmative to the statement, “On the basis of present medical findings, the individual may eventually be able to return home or be discharged.”
- 8) On the November 2023 PAS (Exhibit F-3, Item #38, *Physician Recommendations*), ██████ marked her recommendation for the Resident’s facility stay as “less than 3 months,” and responded to the form question to specify the recommended length of the Resident's stay in the facility as 30 calendar days.
- 9) The Facility maintained a Care Plan for the Resident, and completed Care Plan reviews on June 29, 2023, August 18, 2023, and November 28, 2023 (Exhibit F-4).
- 10) The June, August, and November 2023 Care Plan reviews (Exhibit F-4) for the Resident identified a focus as, “Resident has potential for discharge, or is expected to be discharged, related to: admission for skilled short-term stay,” a goal as, “Resident will have an ongoing discharge plan that provides for safe and effective discharge,” and the noted intervention as, “Initiate Discharge Transition Plan UDA per ██████ policy.”
- 11) The November 2023 Care Plan review (Exhibit F-4) noted, “...Resident verbalizes desire to discharge, however, she will not participate in discharge planning...”
- 12) The November 2023 Care Plan review (Exhibit F-4) included an entry dated November 18, 2023, which reads, “Resident/patient is independently capable of pursuing their own activities without intervention from the facility.”
- 13) ██████ Assistant Director of Rehabilitation for the Facility, testified that the Resident has met her short-term and long-term Occupational Therapy goals.
- 14) ██████, a resident of the facility, testified that he saw the Resident fall on two occasions while at the facility, but did not remember when the falls occurred.
- 15) ██████ recorded a November 9, 2023 progress note (Exhibit F-5) regarding the Resident, which reads, in pertinent part, “Care plan goal was achieved...[Resident] remains independent in her daily leisure pursuits...”
- 16) The Facility issued a November 22, 2023 notice (Exhibit F-3) of discharge to the Resident, with a discharge date of December 22, 2023, a discharge destination of “home with husband,” and the reason for discharge noted as, “The transfer or discharge is appropriate because your health has improved sufficiently that you no longer need the services provided by this facility.”

APPLICABLE POLICY

Code of Federal Regulations 42CFR § 483.15(c)(1)(i)(B) and West Virginia Code § 64-13-4(13)(2)(b) provide in pertinent parts:

The Facility must permit each Resident to remain in the Facility and not discharge the Resident from the Facility unless the discharge is appropriate because the Resident's health has improved sufficiently so the Resident no longer needs the services provided by the Facility...

Code of Federal Regulations 42CFR §§ 483.15(c)(2)(i)(A), (c)(2)(i)(A), and (c)(2)(ii)(A) provide in pertinent parts:

When the facility discharges a resident under circumstances specified in paragraph (c)(1)(i)(B), the facility must ensure that the discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider.

Documentation in the Resident's medical record must include the basis for the transfer per paragraph (c)(1)(i) of this section. The documentation required by paragraph (c)(2)(i) of this section must be made by the resident's physician when discharge is necessary because the Resident's health has improved sufficiently so that the Resident no longer needs the services provided by the facility.

West Virginia Code §§ 64-13-4(13)(6)(b) and 64-13-4(13)(7)(a) provide in pertinent parts:

In the event of an involuntary transfer, the nursing home shall assist the resident in finding a reasonably appropriate alternative placement before the proposed discharge and by developing a plan designed to minimize any transfer trauma to the resident. The plan may include counseling the resident regarding available community resources and taking steps under the nursing home's control to assure safe relocation. A nursing home shall not discharge a resident requiring the nursing home's services to a community setting against her will.

DISCUSSION

The Resident requested a hearing to appeal the Facility's November 22, 2023 decision to discharge her based on improved health. The Facility must show, by a preponderance of the evidence, that their proposal to discharge the Resident is correct on this basis.

The Resident was admitted to the Facility in May 2023. At the time of admission and at the time of the proposed discharge, assessments of the Resident's need for a nursing facility level of care were completed and the medical findings were recorded on May 2023 and November 2023 PAS documents. The May 2023 PAS revealed eight (8) deficits and the November 2023 PAS revealed none. The Resident argued regarding the November 2023 PAS findings, but these findings were found more convincing than the Resident's testimony in the Medicaid hearing held January 30,

2024 (Board of Review Action No. 23-BOR-3745), as well as in this hearing. The November PAS of the Resident revealed that she does not have the five (5) deficits that demonstrate a need for a nursing facility level for Medicaid purposes.

The Resident participated in Occupational Therapy, and [REDACTED] testified the Resident has met her short-term and long-term therapy goals. The Resident's care plan noted the Resident's potential for eventual discharge from admission through every Care Plan review. A November 2023 progress note indicated the Resident's care plan goal was achieved, and that she was independent with her leisure activities in the facility. Another note, from the November 2023 Care Plan review, indicated the Resident was "...independently capable of pursuing their own activities..." at the time. [REDACTED] provided the physician's determination of capacity regarding the Resident, and noted she was the Resident's attending physician. [REDACTED] also provided recommendations in the November 2023 PAS about the necessary duration for the Resident's nursing facility stay and marked it as less than three (3) months, and specifically, 30 calendar days.

Testimony and evidence confirmed the discharge planning efforts of the Facility. The Facility maintained an ongoing discharge plan for the Resident from admission because of her noted potential for discharge. Facility staff testified she was uncooperative with discharge planning. The November 2023 Care Plan review noted the Resident did not cooperate with discharge planning. The Resident testified she did not cooperate with discharge planning because she does not agree with the proposed discharge.

The reliable evidence and testimony from the hearing revealed the Resident improved sufficiently during her facility stay to justify a November 2023 discharge, and that the Facility provided physician documentation of this fact, and that the Facility prepared a discharge plan and offered assistance with discharge planning which was refused by the Resident. The Facility's decision to discharge the Resident is affirmed.

CONCLUSIONS OF LAW

- 1) Because the Resident's health improved sufficiently during her nursing facility stay, she does not meet the medical criteria for nursing facility placement.
- 2) Because the Resident's physician noted an improvement in her health allowing for 30-day discharge, the Facility met its documentation burden in this area.
- 3) Because the Facility maintained a discharge plan for the Resident and offered assistance with discharge, the Facility met its planning burden in this area.
- 4) Because the Facility established a sufficient improvement in the Resident's health during her stay, and met its supplemental burdens, the Facility's proposal to discharge the Resident is affirmed.

DECISION

It is the decision of the State Hearing Officer to **UPHOLD** the action of the Facility to discharge the Resident.

ENTERED this _____ day of March 2024.

**Todd Thornton
State Hearing Officer**