



October 15, 2024

[REDACTED]

RE: [REDACTED]
BOR ACTION NO.: 24-BOR-3144

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]

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

██████████████████████████████████████
Resident,

v.

BOR Action #24-BOR-3144

██,
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 October 8, 2024.

The matter before the Hearing Officer arises from the September 8, 2024 decision by the Facility to propose an involuntary discharge/transfer of the Resident for non-payment.

At the hearing, the Facility appeared by ██████████ Business Manager. The Resident appeared *pro se*. The witnesses were placed under oath and the following documents were admitted into evidence.

Facility’s Exhibits:

- F-1 Scheduling Order dated September 10, 2024
- F-2 Admission Record
- F-3 Collection Notes/Record
- F-4 Notice of Contribution to the Cost of Care (DFA-NH-3) dated June 24, 2024
- F-5 Notice of Transfer or Discharge dated September 8, 2024
- F-6 Collection letters dated July 19, July 26, and August 2, 2024
- F-7 Admissions Agreement signed and dated March 19, 2024

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 involved in an automobile accident and was subsequently admitted to the Facility on March 15, 2024, for rehabilitation. (Exhibit F-2)
- 2) The Resident was approved for West Virginia Medicaid on June 24, 2024, with eligibility backdated to March 26, 2024. (Exhibit F-4)
- 3) The Resident's contribution towards his cost of care was determined to be \$772. (Exhibit F-4)
- 4) The Resident refuses to pay his contribution towards his cost of care.
- 5) On July 19, July 26, and August 2, 2024, the Facility issued written requests for payment of the Resident's outstanding balance. (Exhibit F-6)
- 6) The Resident has not made any payments towards his outstanding balance of \$5,404 as of the date of the hearing.
- 7) On September 8, 2024, the Facility issued a Notice of Transfer or Discharge to the Resident. (Exhibit F-5)

APPLICABLE POLICY

42 CFR §483.15(c), *Transfer and discharge, in pertinent part:*

(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—
...
(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.

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.

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)(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;
- (i) The location to which the resident is transferred or discharged;
- (ii) 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;
- (iii) The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman

WV 64 CSR 13 §4.13.3.b: The documentation shall be made by the resident's physician when transfer or discharge is necessary under the provisions of this rule.

WV 64 CSR 13 §4.13.6.b, *Involuntary Transfer:* In the event of an involuntary transfer, the nursing home shall assist the resident, legal representative, or both in finding a reasonably appropriate alternative placement prior to the proposed transfer or discharge and by developing a plan designed to minimize any transfer trauma to the resident. The plan may include counseling the resident, legal representative, or both regarding available community resources and taking steps under the nursing home's control to assure safe relocation.

WV 64 CSR 13 §4.13.7, *Discharge to a Community Setting*

4.13.7.a. A nursing home shall not discharge a resident requiring the nursing home's services to a community setting against his or her will.

4.13.7.b. A nursing home shall document that a resident who was voluntarily discharged to a community setting fully understood all options for care and helped develop a plan of care in anticipation of the resident's discharge.

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 provide specific information listed in the regulations to be included in the notice. Additionally, the regulations require documentation

to be recorded in the Resident's medical record regarding the specific reason for the resident's discharge or transfer, regardless of the reason for discharge.

The Resident was admitted to the Facility on March 15, 2024 for rehabilitation from injuries he incurred in a motor vehicle accident. On June 24, 2024, the Resident's Long-Term Care Medicaid application was approved with an effective date of March 26, 2024. The June 24, 2024 notice advised the Resident that his contribution towards the cost of care for which he would be responsible was \$772 per month. No payments have been made by the Resident who has an outstanding balance owed to the Facility as of the date of this hearing of \$5,404.

Reasonable and Appropriate Notice to Pay

Under the regulations, a Facility must provide reasonable and appropriate notice to pay for a stay at the nursing facility. The Facility presented letters sent to the Resident on July 19, July 26, and August 2, 2024 (hereinafter referred to as the "collection letters"), to [REDACTED]. This address was the Resident's previous residence prior to admission. (The July 19, 2024 collection letter was also hand-delivered to the Resident at the Facility.) These collection letters explained to the Resident that his account was past due and full payment was required within five days of the date of the letter. The Resident refuses to pay, stating that he does not want to be a pauper when he is eventually discharged.

The Resident testified that he believed that other sources – Medicare, United Healthcare Insurance, and Medicaid – would cover his stay at the Facility in full. [REDACTED] testified that she explained to the Resident on several different occasions regarding his payment responsibility. Moreover, the Admissions Agreement signed and dated March 15, 2024 by the Resident also explains a resident's payment liability. The Facility showed by a preponderance of evidence that it made reasonable and appropriate notice to the Resident that he had an outstanding balance for which payment was required.

Medical Record Documentation

Under the regulations, the reason for a resident's discharge or transfer must be documented in the resident's medical record, regardless of the reason for the discharge or transfer. The Facility failed to provide any evidence to show that the reason for the Resident's discharge had been documented in his medical record.

Discharge Location

Under the regulations, when a resident is involuntarily discharged, the Facility must assist the resident in finding a reasonably appropriate alternative placement before the proposed discharge and include the location on the discharge notice. The Facility's September 8, 2024 letter contained a notation of "community" as the location for the Resident's discharge. State regulations specifically require in the case of discharge of a resident to the community that the Resident must not require nursing home services. Additionally, the state regulations require that a facility ensure that the resident fully understands all options for care and develop a plan of care in anticipation of the resident's discharge.

The Resident testified that he would be moving back to his previous place of residence after he received a leg brace which he stated was ordered a couple of months ago. There was some

contradictory testimony provided by [REDACTED] regarding the location for transfer, which was stated to her from the Facility's social worker, [REDACTED], who was not in attendance for the hearing. Thus, because [REDACTED] conversation with [REDACTED] is considered hearsay testimony, it was not considered. It should also be noted that [REDACTED] did submit a document entitled [REDACTED] Discharge Planning Timeline (8/4 – 9/20). This document also was not considered as [REDACTED] was not in attendance to be cross-examined about the information contained in her document, nor was there any foundational testimony given for consideration for possible admission.

The Resident did testify that his previous residence would be accessible to him even with his mobility limitations due to his recovering leg injury, but believed he could safely enter the residence without much difficulty. Additionally, the Resident stated that he could obtain physical therapy in the community and did not necessarily need to receive it from the Facility's services. The Resident was adamant that he did not wish to remain at the Facility, indicating that he was just waiting for the leg brace. However, because the Facility failed to prove that the reason for the Resident's proposed discharge was documented in his medical record, the issue of the discharge location is moot.

Because the Facility failed to show that the reason for the transfer or discharge was reflected in the Resident's record as required by state and federal regulations, its decision to involuntarily discharge the Resident cannot be affirmed.

CONCLUSIONS OF LAW

- 1) Federal and state regulations require that documentation regarding the reason a nursing facility resident requires a transfer or discharge be included in the resident's medical record.
- 2) The Facility failed to provide any evidence that the reason for the Resident's discharge was documented in his medical record.
- 3) Because the Facility failed to show by a preponderance of evidence that it followed federal and state regulations in the proposed involuntary discharge of the Resident, its decision cannot be affirmed.

DECISION

It is the decision of the State Hearing Officer to **REVERSE** the Facility's September 8, 2024 proposal to discharge the Resident.

ENTERED this 15th day of October 2024.

Lori Woodward, Certified State Hearing Officer