December 6, 2024

RE:
ACTION NO.: 24-BOR-3312

Dear

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,

Angela D. Signore
State Hearing Officer
Member, State Board of Review

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

Cc:

WEST VIRGINIA OFFICE OF INSPECTOR GENERAL
BOARD OF REVIEW

Appellant,

v. **Action Number: 24-BOR-3312**

Respondent.

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 Office of Inspector General Common Chapters Manual. This fair hearing was convened on November 14, 2024, on an appeal filed September 30, 2024.

The matter before the Hearing Officer arises from the September 25, 2024 decision of to discharge the Resident from the Facility.

At the hearing, the Facility appeared by Appearing as witnesses for the Facility were The Resident appeared *pro se*. All witnesses were sworn and the following documents were admitted into evidence.

Facility's Exhibits:

F-1 Physical Therapy Treatment Encounter Notes
F-2 Physical Therapy Evaluation and Plan of Treatment
F-3 Activities of Daily Living (ADL) Index Report
F-4 Progress Notes
F-5 POC Response History

Appellant'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] on July 29, 2024, after a hospital admission due to "generalized weakness and multiple falls." (Exhibit F-4)

2) Upon admission, the Facility and the Resident were aware that the Resident's stay would be "short term," therefore discharge plans were initiated at the time of admittance. (Exhibit F-4)

3) On September 12, 2024, the Resident was reevaluated as having returned to her prior level of function and both, Physical and Occupational Therapy services were no longer required.

4) On or about September 12, 2024, a thirty-day Pre-Admission Screening (PAS) was completed for recertification of the Resident's Long-Term Care (LTC) eligibility. (Exhibit F-4)

5) Due to the Resident's September 2024 PAS denial, on September 25, 2024, the Facility issued a notice to the Resident advising that she would be discharged from the Facility to [redacted] because her health had improved sufficiently, and she no longer needed the services provided by the Facility. (Exhibit F-4)

6) The Resident contested the Facility's decision to discharge to [redacted] – a homeless shelter - and requested a Fair Hearing on September 30, 2024.

7) The Resident's medical record indicates that she is independent in all areas of activities of daily living. (Exhibits F-1 through F-5)

8) The Facility made several attempts to find an alternate discharge location for the Resident. (Exhibit F-4)

APPLICABLE POLICY

Code of Federal Regulations 42 CFR § 483.15(c)(1)(i) provides, in part:

(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)(1)(ii) provides, in part:

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.

42 CFR § 483.15(c)(1)(ii) provides, in part:

(c) ***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.

CFR § 483.15(c)(3)(iii) provides, in part:

(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.

CFR § 483.15(c)(4) provides, in part:

(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.

CFR § 483.15(c)(5) provides, in part:

(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.

West Virginia Code § 64-13-4(6)(b) provides in pertinent parts:

> In the event of an involuntary transfer, the nursing home shall assist the resident 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 regarding available community resources and taking steps under the nursing home's control to assure safe relocation.

DISCUSSION

The Facility initiated an involuntary discharge of the Resident because the Resident's health had sufficiently improved and no longer required the services of the Facility. The Resident contested the Facility's discharge and argued that she continues to have medical needs that cannot be addressed elsewhere and requested to remain at the Facility. The Resident also contested the Facility's decision to discharge her to the location identified on the notice – [redacted] – a homeless shelter. The Facility bears the burden of proof and must demonstrate by a preponderance of the evidence that the Resident's health had improved sufficiently, and she no longer requires the services provided by the Facility. Further, the Facility had to prove that an appropriate discharge location was established according to the policy and that the Resident had been properly notified.

The Resident was admitted to the Facility on July 29, 2024, after a hospital admission due to "generalized weakness and multiple falls." The Facility's representative testified that upon admission, because the Facility and the Resident were aware that the Resident's stay would be "short term," discharge plans were initiated at the time of admittance. On or about September 12, 2024, a new PAS was completed for recertification of the Resident's Long-Term Care eligibility. At that time, the Resident was reevaluated as having returned to her prior level of function. The Appellant's PAS was denied and both, Physical and Occupational Therapy services were no longer required. On September 25, 2024, the Facility issued a thirty-day discharge notice advising the Resident that she would be discharged due to her health having improved to her prior level of functioning and she no longer required the services provided by the Facility. During the hearing, the Facility's representative testified that the discharge was proper because the Resident no longer requires the skilled needs provided by the Facility. The Facility's representative testified that the Social Worker has contacted several facilities and various programs to assist in securing a safe discharge location; however, because the Resident has no income, no friends or family that she can stay with, and because she does not meet the required level of care for admission to an alternative facility, discharge to the [redacted] has been arranged, though they do continue to pursue other options.

The Resident disagreed with her proposed discharge and testified that she requires assistance with bathing and grooming due to arm pain created by a boil that had been removed from under her arm. She further argued that because she requires the assistance of a wheelchair, evacuating on her own in an emergency would be impossible. The Resident further argued that discharge to the

was inadequate due to anxiety and Post-Traumatic Stress Disorder (PTSD) resulting from her history of homelessness and domestic abuse. However, it should be noted that the Resident's case file did not list PTSD in her past or present medical history. The Resident provided further testimony regarding a progress note from what she believed was a November 05, 2024, date of service which revealed the Resident required a nursing home level of care. However, follow-up questioning regarding the progress note revealed that the actual date of service was August 14, 2024. Additionally, the Facility clarified that the progress note the Resident was referring to was the Resident's initial plan of care. She further explained that it is entered into the medical record upon admission and is then automatically generated on all subsequent entries for the physician to update as needed to meet compliance requirements.

Before a Facility transfers or discharges a Resident, Federal Regulations provide that statutory requirements of a proposed transfer include documenting the reasons for the transfer or discharge in the Resident's medical record, the Notice must reflect the *date of transfer* [emphasis added], place of transfer, appeal rights, along with names and contact information for other agencies. Though the September 25, 2024 Notice indicated it was a "30-day discharge notice," the effective date also listed as September 25, 2024 does cause some confusion. It is the recommendation of this Hearing Officer that the Facility should ensure that all future discharge notices contain an actual date of discharge. It should be noted that the Resident was clearly not prejudiced by this omission as she was able to request and receive a fair hearing, while still residing at the Facility much later than the thirty (30) days provided on the notice. It should further be noted that, while not the fault of the Facility, the discharge notice reflected incorrect contact information for the Board of Review. Future notices should include OIGBOR@wv.gov as the email address provided within the Resident's Appeal Rights.

When a transfer or discharge from a Facility is necessary due to improved health, regulations require that the basis for discharge be documented by the Facility's physician and recorded in the Resident's record. As the evidence revealed, the Resident had no skilled nursing needs at the time of the discharge notice, she completes all ADLs unassisted, and she continues to remain ineligible for a lesser level of care due to her improved health. The evidence further revealed that the Facility attempted to assist her with aligning alternate discharge locations, but the Resident was either ineligible for or refused. Whereas the preponderance of evidence demonstrated the Facility followed federal regulations in the proposed discharge of the Resident from its facility due to improved health, the proposed discharge is affirmed.

CONCLUSIONS OF LAW

1) A Resident may be discharged from the Facility when the Resident's health has sufficiently improved such that she no longer requires the services provided by the Facility and when the reason for the Resident's discharge is documented by the Resident's physician in the medical record.

2) The Facility showed by a preponderance of evidence that the Resident's health had improved sufficiently that she no longer requires the services provided by the Facility.

3) The Facility is required to assist the Resident in finding a reasonably appropriate alternative placement before the proposed discharge and taking steps under the nursing home's control to assure safe relocation.

4) The preponderance of evidence established that the Facility took reasonable steps within the Facility's control to assist the Resident with finding an appropriate alternative placement before her proposed discharge.

5) 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 December 2024.

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Angela D. Signore
State Hearing Officer