



# Department of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

October 4, 2018

**CERTIFIED MAIL/RETURN RECEIPT**

Dov Lebovic, Administrator  
Concourse Rehabilitation & Nursing Center  
1072 Grand Concourse  
Bronx, New York 10456

[REDACTED]  
Concourse Rehabilitation & Nursing Center  
1072 Grand Concourse  
Bronx, New York 10456

**RE: In the Matter of [REDACTED] – Discharge Appeal**

Dear Parties:

Enclosed please find the Decision After Hearing in the above referenced matter. This Decision is final and binding.

The party who did not prevail in this hearing may appeal to the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If the party wishes to appeal this decision it may seek advice from the legal resources available (e.g. their attorney, the County Bar Association, Legal Aid, etc.). Such an appeal must be commenced within four (4) months from the date of this Decision.

Sincerely,

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cmg  
Enclosure

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

COPY

In the Matter of an Appeal, pursuant to  
10 NYCRR § 415.3, by



Appellant,

from a determination by

**Concourse Rehabilitation and  
Nursing Center,**

Respondent,

to discharge him from a residential  
health care facility.

DECISION

Hearing Before: Natalie J. Bordeaux  
Administrative Law Judge

Hearing Location: Concourse Rehabilitation and Nursing Center  
1072 Grand Concourse  
Bronx, New York 10456

Hearing Date: September 7, 2018

Parties: Concourse Rehabilitation and Nursing Center  
By: Marvin Neiman, Esq.  
Neiman & Mairanz P.C.  
39 Broadway  
New York, NY 10006

*Pro Se*

### JURISDICTION

By notice dated [REDACTED] 2018, Concourse Rehabilitation and Nursing Center (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (the Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(h).

### HEARING RECORD

Facility witnesses:

Jacob Bokow, Business Office Employee  
Antonia Collado, MSW, Social Worker

Facility exhibits:

1 [REDACTED] 2018 Discharge Notice)  
2 [REDACTED] 2018 Invoice)  
3 (Resident Face Sheet)  
4 [REDACTED] 016 Notice of Acceptance of Nursing  
Home Medicaid Application)  
5 (Admission Agreement)  
6 (Progress note entered [REDACTED] 2018)

Appellant witnesses:

[REDACTED] Appellant

Appellant exhibits:

A (April 2, 2018 Social Security award letter)

The notice of hearing and discharge notice were marked as ALJ Exhibit I. Digital recordings of the hearing and September 20, 2018 conference call were made and are referenced as "Disc 1" and "Disc 2", respectively.

### ISSUES

Has Concourse Rehabilitation and Nursing Center established that its determination to discharge the Appellant was necessary and the discharge plan appropriate?

### FINDINGS OF FACT

1. The Appellant is a [REDACTED] year-old Medicaid recipient who was admitted to the Facility on [REDACTED] 2016. (Facility Exhibit 3.)

2. On [REDACTED] 2016, Facility Social Worker Laura Salcedo met with the Appellant to explain the Appellant's responsibility to pay net available monthly income (NAMI) to the Facility, which would be determined by Medicaid computations. That same day, he signed an admission agreement confirming that he would remit any NAMI determined by the Appellant's Medicaid budget to the Facility. (Facility Exhibit 5; Disc 1 @ 16:30.)

3. The [REDACTED] Department of Social Services determined that the Appellant was required to pay the Facility a NAMI starting [REDACTED] 2016 and each month thereafter. (Facility Exhibit 4.)

4. By notice dated [REDACTED] 2018, the Facility determined to discharge the Appellant on [REDACTED] 2018 because he has failed after reasonable and appropriate notice, to pay for his stay. The notice proposes to discharge the Appellant to [REDACTED] Rehabilitation and [REDACTED] [REDACTED] (Facility Exhibit 1.)

5. As of [REDACTED] 2018, the Appellant has an outstanding balance of [REDACTED] resulting from the Appellant's failure to pay the NAMI each month since [REDACTED] 2016. (Facility Exhibit 2.)

6. The Appellant remains at Concourse Rehabilitation and Nursing Center pending the outcome of this appeal.

#### APPLICABLE LAW

A residential health care facility (also referred to in the regulations as a nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. PHL §§ 2801(2)&(3); 10 NYCRR § 415.2(k).

Regulations at 10 NYCRR § 415.3(h) describe the transfer and discharge rights of residential health care facility residents. They state, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility:

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(b) transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid, or third-party insurance) a stay at the facility.

The residential health care facility must prove by substantial evidence that the discharge was necessary, and the discharge plan was appropriate. 10 NYCRR § 415.3(h)(2)(iii); State Administrative Procedure Act § 306(1).

#### DISCUSSION

The Appellant was admitted to the Facility on [REDACTED], 2016. Since [REDACTED] 2016, the Appellant's receipt of Nursing Home Medicaid is subject to a NAMI. (Facility Exhibit 4.) By notice dated [REDACTED], 2018, the Facility advised the Appellant of its determination to discharge him on [REDACTED], 2018 because he has failed to pay for his stay at Concourse Rehabilitation and Nursing Center. (Facility Exhibit 1.) The Appellant was presented the discharge notice after refusing to discuss his outstanding financial liability with a finance employee. (Facility Exhibit 6; Disc 1 @ 15:08.)

The amount of the Appellant's NAMI is not in dispute.<sup>1</sup> The Appellant has made no payments to the Facility, despite acknowledging that "nothing comes for free." He has retained control of his personal funds, as his monthly Social Security benefits are deposited into his own bank account. (Disc 2 @ 4:40.) More than two months after the discharge determination, the Appellant has still not remitted payment to the Facility.

During a follow-up conference call on September 20, 2018, the Appellant expressed a willingness to pay a varying amount, ranging from [REDACTED] per month, contending that he needs to keep some money in his pocket. The Facility's Finance Department has flatly refused to accept such payment offer as a resolution. (Disc 2 @ 5:00.) The Appellant's offered monthly payment would be lower than the Appellant's NAMI amount per month and would certainly not reduce the current outstanding balance of [REDACTED]. The Facility has established that its determination to discharge the Appellant for failure to pay for the cost of his stay was necessary.

Regarding its discharge plan, the Facility purports to discharge the Appellant to [REDACTED] a nursing home located in the [REDACTED] (Facility Exhibit 1.) Concourse Rehabilitation and Nursing Center is situated in the Bronx, another of New York City's five boroughs. The Appellant has no available home in the community, and requires skilled nursing assistance, thereby requiring a transfer to another residential health care facility.

The Appellant contended that the Facility's discharge plan is unsuitable because he has neither friends nor family in [REDACTED]. Despite receiving the discharge notice in [REDACTED] 2018, the Appellant has suggested no alternate location to which he would agree to be discharged.

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<sup>1</sup> The Appellant was afforded two weeks after the date of this hearing to verify the accuracy of his budget with a local Medicaid office, during which he received confirmation that the computed NAMI was and remains correct. (Disc 2 @ 1:20.)

Although he insisted that the Department of [REDACTED] would be able to provide a home for him, there is no evidence of such help arriving in the immediate future. The Appellant's name remains on a waiting list. (Disc 2 @ 8:12.)

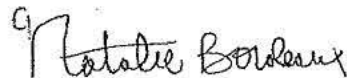
The Facility's attorney represented that a previous employee had contacted several other nursing homes before resorting to placement of the Appellant at the [REDACTED]. In addition, a current employee contacted at least six other nursing homes, all of which rejected the Appellant's placement because of the outstanding financial liability. (Disc 2 @ 10:46.)

The Facility was required to provide a discharge plan which addresses the Appellant's medical needs and how these will be met after discharge. 10 NYCRR § 415.3(h)(1)(vi). The Facility's discharge plan, notwithstanding the Appellant's displeasure with [REDACTED] is appropriate for the Appellant's medical needs. Although the Appellant is encouraged to continue to pursue other discharge options, he is not permitted to remain at Concourse Rehabilitation for an indefinite period until he identifies a discharge location that he finds more agreeable. The Facility has established that its discharge plan is appropriate.

### DECISION

Concourse Rehabilitation and Nursing Center has established that its determination to discharge the Appellant was necessary and its discharge plan appropriate.

Dated: October 3, 2018  
New York, New York



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Natalie J. Bordeaux  
Administrative Law Judge