



Department of Health

ANDREW M. CUOMO
Governor

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

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

December 28, 2018

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Holliswood Center for Rehabilitation
and Healthcare
195-44 Woodhull Avenue
Jamaica, New York 11423

Zevi Lipschitz, Administrator
Holliswood Center for Rehabilitation
and Healthcare
195-44 Woodhull Avenue
Jamaica, New York 11423

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

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

[REDACTED]

Appellant, :

from a determination by :

Holliswood Center for Rehabilitation and Healthcare, :

Respondent, :

to discharge him from a residential health care facility. :

COPY

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Holliswood Center for Rehabilitation and Healthcare
195-44 Woodhull Avenue
Jamaica, New York 11423

Hearing Date:

December 18, 2018

Parties:

Holliswood Center for Rehabilitation and Healthcare
By: Zevi Lipschitz, Administrator

[REDACTED]

Pro Se, with assistance from Kim Mitchell

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as Holliswood Center for Rehabilitation and Healthcare (“Respondent” or “Facility”) is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(h). Respondent determined to discharge [REDACTED] (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(b), which provides, in pertinent part:

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. For a resident who becomes eligible for Medicaid after admission to a facility the facility may charge a resident only allowable charges under Medicaid. Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the funds.

Appellant appealed the discharge determination to the New York State Department of Health (“NYSDOH”), and a hearing on that appeal was held. Pursuant to 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate; pursuant to the State Administrative Procedure Act, the standard of proof is substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact; it is less than a preponderance of the evidence but more than mere surmise, conjecture or speculation. . . . Put

differently, there must be a rational basis for the decision. Stoker v. Tarentino, 101 A.D.2d 651, 652, 475 N.Y.S.2d 562, 564 [App. Div. 3d Dept. 1984], mod. 64 N.Y.2d 994, 489 N.Y.S.2d 43.

A digital recording of the hearing was made part of the record. Appellant appeared and testified on his own behalf [REDACTED] (“Appellant’s [REDACTED] assisted Appellant at the hearing and gave testimony. Zevi Lipschitz–Administrator and Regina Tarver–Social Worker testified for Respondent; Verna Mitchell, R.N.–DNS and Jerome Stuart–Medicaid Coordinator were present for portions of the hearing but did not testify.

The following documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ, Facility, and Appellant Exhibits:

ALJ

I: Notice of Hearing with attached Notice of Discharge/Transfer

Facility:

- 1: [REDACTED] 3/18 budget correction letter from Facility to NYC HRA NHED
- 2: [REDACTED] 18 invoice/ bill from Facility to Appellant
- 3: [REDACTED] 18 HRA MAP 259E form
- 4: [REDACTED] 18 HRA MAP 2159 form
- 5: 12/5/18 letter from Facility to NYSDOH
- 6: Excerpts from Admission Agreement re financial terms and signature pages
- 7: [REDACTED] 18 emails between Respondent and its corporate office re payment
- 8: [REDACTED] 2018 Social Services progress notes

Appellant:

A: Copies of photos of Appellant’s [REDACTED] (2018) and [REDACTED] (2017)¹

ISSUE

Has Holliswood Center for Rehabilitation and Healthcare established that the discharge is necessary and the discharge plan is appropriate?

¹ The parties were informed that the [REDACTED] 2017 photo would not be considered as it does not reflect a current condition.

FINDINGS OF FACT

Citations in parentheses refer to testimony (“T”) of witnesses and exhibits (“Ex”) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Respondent, Holliswood Center for Rehabilitation and Healthcare, is a residential health care facility located in Jamaica, New York. (Ex 1)

2. Appellant, [REDACTED], age [REDACTED] was admitted to the Facility on [REDACTED] 2017, for [REDACTED]-term therapy. Appellant’s “original anticipated discharge date [of [REDACTED] 2018 ... [was] delayed, new anticipated date of discharge is [REDACTED] 2019.” (Ex 3; Ex 8)

3. By notice date [REDACTED] 2018 (“discharge notice”), Respondent advised Appellant that it had determined to discharge him on the grounds of failure, after reasonable and appropriate notice, to pay (or have paid under Medicare, Medicaid, or private insurance) for his stay at the Facility. [REDACTED] 2018 invoice shows an outstanding balance of [REDACTED] calculated from [REDACTED] 2017 to [REDACTED] 2018. The discharge location is the [REDACTED] (Ex I; Ex 1)

4. An Admission Agreement signed by the Facility and Appellant on [REDACTED] 2017, demonstrates the Resident’s agreement to pay NAMI (Net Available Monthly Income). However, the amount of Appellant’s NAMI has not been determinatively established. The request by Respondent in its [REDACTED] 2018 letter to NYC HRA NHED (Ex 1) (two days after the discharge notice was issued) to establish a “Correct NAMI amount for [REDACTED] 2018 forward ... [of] [REDACTED] was “still pending approval” (Ex 5) on [REDACTED] 2018. (Ex 1; Ex 3; Ex 4; Ex 5; Ex 6; T Lipschitz, Appellant; Appellant’s [REDACTED])

² This amount is in dispute due to the fluctuating NAMI amounts identified throughout the course of Appellant’s stay at the Facility. See Finding of Fact #4.

5. Respondent has not produced documentation to demonstrate that the Facility sought payment from Appellant prior to issuing the [REDACTED] 2018 discharge notice. The only invoice produced by Respondent is date [REDACTED] 2018, two weeks after the discharge notice was issued to Appellant. Neither Appellant nor Appellant's [REDACTED] was included in the [REDACTED] and [REDACTED] 2018 emails between Respondent and its corporate office regarding payment. (Ex I; Ex 2; Ex 7; Ex 8; T Lipschitz, Tarver, Appellant, Appellant's [REDACTED])
6. Appellant has remained at the Facility pending the outcome of this proceeding.

DISCUSSION

It is a resident's responsibility and obligation to pay for a stay at a facility. When a facility seeks to involuntarily discharge a resident on the grounds set forth in 10 NYCRR §415.3(h)(1)(i)(b), and the resident appeals that determination, the facility has the burden of proving, by substantial evidence, that the resident has failed, *after reasonable and appropriate notice*, to pay for a stay at its facility, and that the discharge location is appropriate.

The first issue to be determined at this hearing is whether Appellant has failed, after reasonable and appropriate notice, to pay for his stay at this Facility. The administrator and social worker both testified that the Facility had numerous conversations with Appellant about payment and that monthly bills were sent to Appellant's [REDACTED] however, the Facility produced only one invoice/ bill date [REDACTED] 2018, two weeks after the discharge notice was issued. This is woefully inadequate to support Respondent's contention that it had given Appellant or his family *reasonable and appropriate notice* of amounts due the Facility.

Since 10 NYCRR §415.3(h)(1)(i)(b) requires not just that a resident has failed to pay for a stay at a facility but also that such failure occurred *after reasonable and appropriate notice* was

³ Appellant's [REDACTED] adamantly denies that any bills were ever sent to her.

given, I find that the Facility has not met its burden of proving that it gave Appellant *reasonable and appropriate notice* of amounts due the Facility.

In conclusion, while Appellant and his ██████████ acknowledged that Appellant owes a debt to the Facility, the Facility failed to show that it provided *reasonable and appropriate notice of the amounts due and owing* before the discharge notice was issued. Even though substantial evidence must be “more than mere surmise, conjecture or speculation,” I find that Respondent has not met its burden; the evidence did not provide proof that could be accepted as “adequate to support a conclusion or ultimate fact” or a “rational basis” for Respondent’s claim that monthly NAMI bills were provided to Appellant and/or that Respondent gave reasonable and appropriate notice of Appellant’s financial obligation before the discharge notice was issued.⁴

Having found that Respondent has failed to prove the grounds for discharge, *i.e.*, that Appellant has failed, *after reasonable and appropriate notice*, to pay for his stay at the facility, I will not address the issue of whether the discharge plan and location is appropriate.

DECISION

I find that the Facility has failed to prove by substantial evidence that the discharge is necessary.

The appeal by Appellant is therefore GRANTED.

Respondent, Holliswood Center for Rehabilitation and Healthcare, is not authorized to discharge Appellant in accordance with the ██████████ 2018 Discharge Notice.

⁴ Appellant credibly testified that, even though an exact NAMI amount had not been firmly established, he is currently engaged in good faith negotiations with the Facility’s finance department to make arrangements for monthly NAMI payments and for payment of his debt. The Parties are encouraged to continue these efforts.

[REDACTED] Holliswood

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

Dated: New York, New York
December 27, 2018


Ann H. Gayle
Administrative Law Judge

TO: [REDACTED]
c/o Holliswood Center for Rehabilitation and Healthcare
195-44 Woodhull Avenue
Jamaica, New York 11423

Zevi Lipschitz, Administrator
Holliswood Center for Rehabilitation and Healthcare
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