

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan  
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## Department of Health

ANDREW M. CUOMO  
Governor

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

LISA PINO, M.A., J.D.  
Executive Deputy Commissioner

July 21, 2021

### CERTIFIED MAIL/RETURN RECEIPT

■■■■ ■■■■  
c/o Hudson Park Rehabilitation & Nursing  
325 Northern Boulevard  
Albany, New York 12204

James Caligiuri, Administrator  
Hudson Park Rehabilitation & Nursing  
325 Northern Boulevard  
Albany, New York 12204

**RE: In the Matter of ■■■■ ■■■■ – 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

██████████

Appellant,

COPY

from a determination by

DECISION

HUDSON PARK REHABILITATION  
and NURSING CENTER

Respondent,

to discharge her from a residential health care facility.

Hearing Before:

Jean T. Carney  
Administrative Law Judge

Held via:

Cisco WebEx videoconference

Hearing Date:

June 23, 2021

Parties:

██████████ Appellant, pro se

Hudson Park, Respondent

By: James Caligiuri, Administrator  
jcaligiuri@hudsonparkrehab.com

## JURISDICTION

By notice dated [REDACTED] 2021, Hudson Park Rehabilitation and Nursing Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] [REDACTED] (Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i).

## HEARING RECORD

Facility Exhibit: 1 – Face Sheet, BIMS, Correspondence, Discharge Notice, Invoices

Facility Witnesses: Angela Elman, Business Office Director  
James Caligiuri, Administrator

Appellant Exhibits: None

Appellant Witness: [REDACTED] [REDACTED] Appellant

Katie Hawksby, Social Worker, appeared to assist the Appellant with the technical aspects of the hearing. The record was left open until July 7, 2021, so that the parties could attempt a mutually agreed upon resolution of the issues. No agreement was reached.

## ISSUES

Has the Facility established that the Appellant's discharge is necessary and discharge plan is appropriate?

### FINDINGS OF FACT

An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED], 2018 with multiple diagnoses, for long term placement. (Exhibit 1: Face Sheet).
2. The Appellant was on [REDACTED] Insurance from [REDACTED] of 2018, until [REDACTED] of 2020; at which point she switched to Medicaid Fee for Service. From [REDACTED] 2018 until the date of the hearing, the Appellant was required to pay a Net Available Monthly Income (NAMI) in the amount of \$ [REDACTED] per month. (Exhibit 1: Correspondence dated [REDACTED] 2021, NAMI Billing Statement, Invoices; and Ms. Elman's testimony).
3. The Facility spoke to the Appellant several times regarding her obligation to pay her NAMI; sent her a collection letter prior to serving the Discharge Notice; and discussed methods of payment, including direct deposit. (Exhibit 1: Timeline; Ms. Elman's testimony).
4. On [REDACTED] 2021, the Facility served a Discharge/Transfer Notice on the Appellant, asserting her failure to pay; and naming the [REDACTED] in [REDACTED] as the discharge location. (Exhibit 1).
5. The Appellant admitted that she had not paid her NAMI; and as of [REDACTED] 2021, she owed the Facility \$ [REDACTED] (Exhibit 1: Invoices; Appellant's testimony).

### APPLICABLE LAW

A residential health care facility, also referred to as a nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to

residents who do not require hospitalization. (Public Health Law §§ 2801[2] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(4)(b), discharge is “permissible when the resident has failed, after reasonable and appropriate notice, to pay for...a stay at the facility.”

Additionally, if a resident is eligible for Medicaid, the discharge or transfer is only permissible if the charge is not in dispute, no denial of benefits is pending appeal, or the funds are available and the resident refuses to cooperate with the facility in obtaining the funds. (10 NYCRR § 415.3[i][4][b]).

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision. (*Stoker v. Tarantino*, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3<sup>rd</sup> Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

#### DISCUSSION

There is no factual dispute in this matter. The Appellant has had reasonable and appropriate notice that she is required to pay her NAMI, and she has failed to pay. In addition, the Appellant has failed to cooperate with the facility in obtaining the funds owed. In her defense, the Appellant asserts that she does not want to remain in a nursing home and wants to save her funds so that she may obtain housing in the community. (Appellant’s testimony). However, she also recognizes that she is unable to care for herself at this time, and requires the services provided by the Facility. While I empathize

with the Appellant's desire to live independently, that does not entitle her to refuse to pay her share of her stay at the facility.


The proposed discharge location is comparable to this Facility, and is not far from where the Appellant lived prior to her current admission; which may be beneficial if her condition improves and she can safely be discharged to the community. While it is never easy to adjust to new surroundings, the discharge location is appropriate.

**ORDER**

Hudson Park Rehabilitation and Nursing Center has established that its determination to discharge the Appellant was necessary, and that transfer to Oneida Center is appropriate.

1. Hudson Park Rehabilitation and Nursing Center is authorized to discharge the Appellant in accordance with its discharge plan dated [REDACTED] 2021.
2. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules.

**DATED:** July 21, 2021  
Albany, New York

  
**JEAN T. CARNEY**  
Administrative Law Judge

**TO:** James Caligiuri, Administrator  
Hudson Park Rehabilitation and Nursing Center  
325 Northern Boulevard  
Albany, New York 12204  
jcaligiuri@hudsonparkrehab.com



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