

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

KATHY HOCHUL  
Governor

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

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

November 3, 2021

**CERTIFIED MAIL/RETURN RECEIPT**

██████████  
c/o Huntington Hills Center  
for Health and Rehabilitation  
400 South Service Road  
Melville, New York 11747

Jessica D'Amico, SW  
Huntington Hills Center  
for Health and Rehabilitation  
400 South Service Road  
Melville, New York 11747

**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**

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In the matter of an appeal, pursuant to  
10 NYCRR 415.3, by

██████████

Appellant,

from a determination by

**Huntington Hills Center for  
Health & Rehabilitation,**

Respondent,

to discharge her from a residential  
health care facility.

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**COPY**

**Decision  
After Hearing**

Hearing before: John Harris Terepka  
Administrative Law Judge

Hearing date: November 2, 2021  
By videoconference

Parties: Huntington Hills Center for Health & Rehabilitation  
400 South Service Road  
Melville, New York 11747  
By: Jessica D'Amico, SW  
[jdamico@nathealthcare.com](mailto:jdamico@nathealthcare.com)

██████████  
Huntington Hills Center for Health & Rehabilitation  
No appearance

**JURISDICTION**

Huntington Hills Center for Health & Rehabilitation (the Respondent), a residential health care facility subject to Article 28 of the Public Health Law, determined to discharge ██████████ (the Appellant) from care and treatment in its nursing home. Pursuant to 10 NYCRR 415.3(i), the Appellant appealed the discharge determination to the New York State Department of Health.

The Appellant, on her own behalf, requested this hearing on October 14, 2021. A notice of hearing dated October 20, 2021 was issued scheduling the hearing for November 2, 2021. (Exhibit ALJ I.) On October 25, 2021, the Appellant submitted a letter to the Respondent, which it forwarded to the Department, that stated:

I ██████████ will not be appearing on Nov. 2, 2021. We have come to an understanding. To whom it may concern. Thank you, ██████████ (Exhibit 1.)

The Respondent did not agree that there was any understanding between the parties, no adjournment was requested by either party, and the hearing was not rescheduled. On November 2, the Respondent's staff again advised the Appellant that there was no understanding, explained that the hearing was proceeding, and made attempts to persuade her to leave her room and attend. The Appellant refused to leave her room or attend the hearing.

**SUMMARY OF FACTS**

1. Respondent Huntington Hills Center for Health & Rehabilitation is a residential health care facility, or nursing home, located in Melville, New York. Appellant ██████████ ██████████ age ██████████ was admitted to the facility for long term care on ██████████, 2020. (Exhibit A.)

2. The Appellant applied for Medicaid and was accepted. The Suffolk County Division of Human Services, which processed her application, determined that the Appellant's net available monthly income (NAMI) as of ████████ 2020 was \$█████ Effective ████████ 2021 the NAMI increased to \$█████ (Exhibit B.) The NAMI represents income of the Appellant, which she is required to contribute for the cost of her nursing home care while Medicaid covers the balance.

3. The balance owed by the Appellant to the Respondent as of ████████ 2021, all attributable to the NAMI, was \$█████ (Exhibit C.) The Respondent has billed the Appellant and her ██████ monthly, and has repeatedly advised her of the outstanding bill, but since her admission she has made monthly payments consistently amounting to less than half of the charges for which she is responsible.

4. By notice dated ████████ 2021, the Respondent advised the Appellant that it had determined to discharge her on ████████ 2021 on the grounds that she has failed, after reasonable and appropriate notice, to pay for her stay at the facility. (Exhibit ALJ I.)

5. The Appellant continues to require nursing home care. The Respondent's discharge plan is to transfer her to ████████████████████ in ████████ New York, which offers a similar level of care to that provided at the Respondent's facility. ██████████ has agreed to admit her. The Respondent's discharge plan includes arrangements for transfer, medications, travel and other logistical assistance to be provided as needed and requested. (Testimony.)

6. The Appellant remains at Huntington Hills pending the outcome of this proceeding.

**ISSUES**

Has the Respondent established that the transfer is necessary and the discharge plan appropriate?

**HEARING RECORD**

Respondent witnesses: Jessica D'Amico, social worker  
Nicole Pinto, social worker  
Isadora Goldberg, business office manager  
Michael Letter, administrator

Respondent exhibits: A-D

Appellant witnesses: none

Appellant exhibits: 1

ALJ exhibits: I (notice of hearing with notice of discharge)

The hearing was held and recorded by videoconference. (40m17s.)

**DISCUSSION**

Transfer and discharge rights of nursing home residents are set forth at Public Health Law 2803-z and 10 NYCRR 415.3(i). The Respondent relies on 10 NYCRR 415.3(i)(1)(i)(b), which provides:

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.

The Respondent has the burden of proving that the transfer is necessary and the discharge plan appropriate. 10 NYCRR 415.3(i)(2)(iii).

The Respondent presented an account showing that the Appellant's balance due for care at its nursing home grew steadily from her admission in late 2020. (Exhibit C.)

Medicaid has covered most of her charges, but she has, from the outset, been responsible for a monthly contribution, the "net available monthly income" (NAMI), for the cost of her care. Her NAMI, based on her income, was \$ [REDACTED] rising to \$ [REDACTED] in [REDACTED] 2021. (Exhibit B.) Since her admission she has received monthly bills, but she has consistently paid less than half of each monthly charge. She has repeatedly advised the Respondent that she does not intend to pay the full amount of her NAMI obligation because it is more than she wants to pay. (Testimony.)

There is no evidence that the local social services district's NAMI determination has ever been disputed by the Appellant. Neither the charges nor the Appellant's NAMI obligation are in dispute, and the evidence is uncontroverted that the balance now due is in excess of \$ [REDACTED]. The Respondent has met its burden of establishing valid grounds for discharge pursuant to 10 NYCRR 415.3(i)(1)(i)(b).

With regard to the appropriateness of the discharge plan, there is no dispute that the Appellant continues to require the level of care provided by a nursing home. The Respondent proposes to transfer her to [REDACTED], which provides a similar level of care to that given at Huntington Hills.

A nursing home must permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(i)(1)(vii). The Appellant and her [REDACTED] were both fully advised of and initially participated in the Respondent's efforts to find another nursing home. These efforts included contacting all local nursing homes in which the Appellant expressed an interest, but failed to identify an available bed. (Testimony; Exhibit D.) The Respondent has now identified an available bed at [REDACTED], but the Appellant wants to stay at

Huntington Hills. She has consistently failed, however, to pay her NAMI in full, has failed to demonstrate any intention of doing so, and has failed to express any willingness or effort to pay her existing balance due.


The Respondent's responsibility is to provide a safe and appropriate plan of care upon discharge. A discharge plan providing a safe and appropriate level of care is in place. The proposed transfer to ██████████ meets the Respondent's discharge planning obligation.

**DECISION:** Respondent Huntington Hills Center for Health & Rehabilitation has established valid grounds for the discharge of Appellant ██████████ and has established that the discharge plan is appropriate.

The Respondent is authorized to discharge the Appellant in accordance with the ██████████, 2021 discharge notice.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York  
November 2, 2021

  
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John Harris Terepka  
Administrative Law Judge