

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan  
SAPA File  
BOA by scan



# Department of Health

KATHY HOCHUL  
Governor

MARY T. BASSETT, M.D., M.P.H.  
Commissioner

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

October 11, 2022

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o The Silvercrest Center  
144-45 87<sup>th</sup> Avenue  
Briarwood, New York 11435

Maureen Peters, DSW  
The Silvercrest Center  
144-45 87<sup>th</sup> Avenue  
Briarwood, New York 11435

**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,

Natalie J. Bordeaux  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB: cmg  
Enclosure

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

██████████

Appellant,

from a determination by

**The Silvercrest Center for  
Nursing and Rehabilitation**

Respondent,

to discharge him from a residential  
health care facility.

COPY

**DECISION  
AND  
ORDER**

Hearing Before: Natalie J. Bordeaux  
Administrative Law Judge

Held via: WebEx Videoconference

Hearing Date: October 7, 2022

Parties: The Silvercrest Center for Nursing and Rehabilitation  
144-45 87<sup>th</sup> Avenue  
Briarwood, New York 11435  
By: Maureen Peters, Director of Social Work

██████████  
*Pro se*

**JURISDICTION**

The Silvercrest Center for Nursing and Rehabilitation (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge ██████████ (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

**HEARING RECORD**

Facility witnesses: Maureen Peters, Director of Social Work  
Ava Cevallos, Social Worker  
Kim Cheek, Medicaid Coordinator

Facility exhibits: 1-6

Appellant witnesses: ██████████ Appellant

The notice of hearing, discharge notice, and the accompanying cover letter were marked as ALJ Exhibit I. A digital recording of the hearing was made (1:06:00 in duration).

**ISSUES**

Has the Facility established that its determination to discharge the Appellant is permissible and that the discharge plan is appropriate?

**FINDINGS OF FACT**

1. The Appellant is a ██████-year-old man who was transferred from ██████████ Hospital to the Facility on ██████████, 2021 for short-term rehabilitation after surgical ██████████. (Exhibit 3.)
2. The Appellant is a recipient of both Medicare and Medicaid. The Appellant's eligibility for Medicaid includes a requirement that he remit a certain amount of his income (net available income or "NAMI") to the Facility for each month of his stay. (Exhibits 2, 3.)
3. Each month, the Facility informed the Appellant, verbally and in writing, that he was required to pay his NAMI to the Facility. (Exhibit 2; Recording @ 15:21.)

4. As of ██████████ 2022, the Appellant owed the Facility over \$ ██████████ for unpaid NAMI.  
(Recording @ 11:35.)

5. By notice dated ██████████, 2022, the Facility determined to discharge the Appellant on ██████████, 2022 because he failed, after reasonable and appropriate notice, to pay for his stay at the facility. The notice advised the Appellant that he would be discharged to ██████████ Assisted Living in ██████████. (Exhibit 1; Recording @ 35:59.)

6. The Appellant is wheelchair-bound, but capable of propelling himself independently. He has no need for nursing home care. (Exhibit 2; Recording @ 10:20.)

7. The Appellant remains at the Facility pending the outcome of the hearing.

#### 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(i) 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:

\*\*\*

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

**DISCUSSION**

The Appellant does not dispute that Facility staff has regularly informed him about and billed him for his unpaid NAMI amounts that he is required to pay the Facility for the cost of his stay. (Recording @ 8:45.) He has amassed an outstanding balance exceeding \$██████████ (Recording @ 11:35.) The amount of his unpaid charges is not in dispute. The Facility has established that the Appellant has failed, after reasonable and appropriate notice, to pay for his stay at the facility.

The Appellant disagrees with the proposed discharge plan because the named assisted living facility is not located in ██████████, a neighborhood within which he is most familiar. (Recording @ 35:15.) Although ██████████ Assisted Living is also located in ██████████ further along ██████████, the Appellant has refused to consider it as a possible discharge option. His refusal to live in an assisted living facility precludes a discharge to such a setting. 18 NYCRR § 494.4(d)(5).

Previously, in ██████████ 2022, the Facility had issued a discharge notice proposing to discharge the Appellant to a different assisted living facility, which the Appellant sought to appeal. (Exhibit 5.) During a July 7, 2022 conference call involving the Appellant, Maureen Peters (the Facility's Director of Social Work), and the Administrative Law Judge, the parties were advised that the Appellant's disagreement with the discharge plan and stated refusal to reside there rendered the discharge plan inappropriate. (Recording @ 34:35.)

Ms. Peters proposes another assisted living facility in the ██████████ 2022 discharge notice because she believes that such a setting is in the Appellant's best interest. She considered the reasons for the Appellant's prior homelessness (non-payment of rent that led to his eviction), along with the social supports that an assisted living facility would afford the Appellant. (Recording @ 47:55.) While the Facility has devised a discharge plan that would address the Appellant's needs, both medical and social (and thus, more than what is required by regulation), it is not authorized to discharge the Appellant to ██████████ Assisted Living against the Appellant's will.

The Appellant is strongly advised to reconsider his decision to reject the Facility's attempts at procuring placement for him at an assisted living facility as he may subsequently face the prospect of discharge to a less favorable setting. While he is entitled to contest any future discharge determination, the Appellant should note that, unlike assisted living facilities, other proposed discharge locations do not require his approval in order to be deemed appropriate.

**DECISION AND ORDER**

1. The Facility has established that its determination to discharge the Appellant is permissible pursuant to 10 NYCRR § 415.3(i)(1)(i)(b).
2. The Facility has failed to establish that the discharge plan is appropriate.
3. The Facility is not authorized to discharge the Appellant pursuant to its ██████████ 2022 notice.

Dated: October 11, 2022  
Menands, New York

Natalie J. Bordeaux /ny  
Natalie J. Bordeaux, Administrative Law Judge