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Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 14, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Rochester Center for Rehabilitation
525 Beahan Road
Rochester, New York 14624

Tracy Sugar, Business Office Director
Rochester Center for Rehabilitation
525 Beahan Road
Rochester, New York 14624

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

ROCHESTER CENTER FOR REHABILITATION

Respondent,

to discharge him from a residential health care facility.

COPY

DECISION

Hearing Before: Jean T. Carney
Administrative Law Judge

Held via: Cisco WebEx videoconference

Hearing Date: December 1, 2022

Parties: Rochester Center for Rehabilitation, Respondent
By: Tracy Sugar
Business Office Director
tsugar@rochestercenter.net

██████████ ██████████ Appellant, *pro se*

JURISDICTION

By notice dated [REDACTED] 2022, Rochester Center for Rehabilitation (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 and place him in another residential care 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

In support of its determination, the facility presented documents (Exhibits 1-5); and the testimony of Tracy Sugar, Business Office Director; Eli Vatch, Administrator; and Courtney Griffin, Director of Social Work. The Appellant testified in his own behalf and presented no documentary evidence. The Notice of Hearing with Discharge Notice was admitted (ALJ I); and the hearing was digitally recorded.

ISSUES

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

FINDINGS OF FACT

Citations in parentheses refer to testimony (T) and exhibits (Exh) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was rejected in favor of cited evidence. 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 male who was admitted to the Facility for short term rehabilitative care on [REDACTED], 2021. He has not progressed in his rehabilitation therapies, so discharge to the community is not appropriate at this time. (T Ms. Sugar; Mr. [REDACTED])

2. From the date of admission until [REDACTED], 2021, the Office of Medicaid Management approved the Appellant's application, and calculated his Net Available Monthly Income (NAMI) contribution to be \$ [REDACTED] for the months of [REDACTED] and [REDACTED] 2021. The NAMI is the amount Medicaid allows a facility to charge a resident for their stay at the facility. (Exh 2; T Ms. Sugar).

3. Effective [REDACTED] 2021, the Appellant's Medicaid application was denied due to excess resources in the amount of [REDACTED] from insurance payments. (Exh 3).

4. Effective [REDACTED] 2021, the Appellant's Medicaid application was approved through [REDACTED] 2022. The Appellant's NAMI was calculated to be \$ [REDACTED] from [REDACTED] 2021 to [REDACTED] 2022, and \$ [REDACTED] for [REDACTED] 2022 to [REDACTED], 2022. The Appellant was private pay for the months of [REDACTED], [REDACTED] and [REDACTED] of 2021. (Exhs 1 and 2; T Ms. Sugar).

5. The Facility made numerous attempts to discuss the Appellant's financial obligations with him, and delivered invoices detailing the amounts owed. The facility also sent copies of the invoices to the Appellant's [REDACTED] and spoke with her on several occasions regarding the outstanding balance. As of [REDACTED] 2022, the Appellant owed \$ [REDACTED] for his stay in the facility. (Exhs 1 and 5; T Ms. Sugar, Mr. Vatch, and Ms. Griffin).

6. The Appellant's [REDACTED], and he intends to use the [REDACTED], so that he has a home when he is ready to be discharged. The Appellant is unwilling to use that money to pay for his stay in the facility. (T [REDACTED])

7. The facility made referrals to four nursing homes in [REDACTED] but he was not accepted at any of them. The Appellant has been accepted at [REDACTED],

another residential health care facility that will provide the same level of care as Rochester Center for Rehabilitation. (ALJ I; T Ms. Griffin).

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), a resident may be discharged when the resident has failed to pay for a stay at the facility after being given reasonable and appropriate notice. If a resident becomes eligible for Medicaid, the facility may only charge the amount allowed by Medicaid. (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 [3rd Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

DISCUSSION

The Facility alleges that the Appellant has failed to pay for his stay after being given reasonable notice that payment is due. The proposed discharge location is another nursing home that will provide the same level of care. The Facility has presented sufficient evidence that the Appellant's discharge is necessary, and the discharge plan is appropriate.

The evidence shows that the Appellant has incurred charges in excess of \$ [REDACTED]. The amounts due for some months reflects the full amount of his stay because his Medicaid application was denied; and the amounts due for the other months reflects his NAMI when Medicaid was coverage was approved. The Facility provided the Appellant with invoices every month, and he acknowledged receiving those invoices. The evidence further shows that the Facility did not charge the Appellant more than was allowed by Medicaid during the months he was receiving Medicaid benefits.

The Appellant testified that he needs the money he has kept from his insurance claim to re-build his home. However, discharge to the community is not appropriate for the foreseeable future. The Appellant's arguments do not overcome the fact that he was presented with invoices for payment for his portion of his stay at the Facility, that he refused to pay for his stay, and after giving reasonable notice, the Facility informed him of their intent to transfer him to another nursing home.

In determining an appropriate discharge location, the facility should make reasonable efforts to find a place within the resident's geographic area. The resident should be included in discharge planning, and his input taken into consideration. (10 NYCRR 415.11[d][3]). Here, the Appellant wanted to remain in [REDACTED] and his family is in the area; but he was not accepted at the four nursing homes Ms. Griffin contacted in the [REDACTED] area. Ms. Griffin's efforts to locate an appropriate facility were nominal at best. There are considerably more than four nursing homes between [REDACTED] and [REDACTED] and the Appellant does not require any special services provided by the [REDACTED] that other facilities closer to [REDACTED] do not provide.


The facility has established that its determination to discharge the Appellant was correct, and that transfer to a comparable facility is appropriate. However, before sending

the Appellant to [REDACTED], the facility should make reasonable efforts to locate another nursing home in the Appellant's preferred geographic area.

DECISION

1. The Facility has shown that the Appellant's discharge is necessary.
2. The facility shall have until [REDACTED] 2022, to work with the Appellant on an appropriate discharge plan, and must contact additional nursing facilities in [REDACTED] County and all adjoining counties. If, after making reasonable efforts, no other facility accepts the Appellant, then the facility may discharge the Appellant pursuant to the discharge notice after [REDACTED], 2022.
2. This Decision may be appealed to a court in the appropriate jurisdiction.
3. This Decision shall become effective upon service to the parties.

**DATED: Albany, New York
December 13, 2022**


JEAN T. CARNEY
Administrative Law Judge

TO: Tracy Sugar, Business office Director
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Rochester, New York 14624
tsugar@rochestercenter.net

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