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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

July 13, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
Greene Meadows Nursing
and Rehabilitation Center
161 Jefferson Heights
Catskill, New York 12414

Stephanie Tolle, DSW
Greene Meadows Nursing
and Rehabilitation Center
161 Jefferson Heights
Catskill, New York 12414

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

Greene Meadows Nursing and Rehabilitation Center
Respondent,

to discharge him from a residential health care facility.

Hearing Before: Jean T. Carney
Administrative Law Judge

Held via: Cisco WebEx videoconference

Hearing Date: July 12, 2023

Parties: Greene Meadows Nursing and
Rehabilitation Center, Respondent
By: Stephanie Tolle, DSW

██████████ Appellant, *pro se*

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DECISION

JURISDICTION

By notice dated [REDACTED] 2023, Greene Meadows Nursing and Rehabilitation Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant or Resident) from the Facility for nonpayment, to the [REDACTED] Department of Social Services (DSS). 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 A and B); and the testimony of Tania Spatafora, Business Office Director. The Resident did not testify or present any documentary evidence. The hearing was digitally recorded and made part of the record.

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 Resident has resided in the Facility since on or before [REDACTED] 2021. (T Exh A).
2. The Resident was approved for Medicaid on [REDACTED] 2021. The Medicaid program calculated the Resident's monthly contribution, also known as the Net Available

Monthly Income (NAMI), as \$ [REDACTED] until [REDACTED] 2022; and from [REDACTED] 2022 to [REDACTED] 2022 as \$ [REDACTED] (Exh B; T Ms. Spatafora).

3. The Facility made numerous attempts to discuss the Resident's financial obligations with him; but he has refused to pay. As of [REDACTED] 2023, the Respondent had an outstanding balance due of \$ [REDACTED] (Exh A; T Ms. Spatafora).

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]).

A resident may be transferred when the interdisciplinary care team, in consultation with the resident or the resident's representative, determines that the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility. (10 NYCRR § 415.3[i][1][i][a][2]).

The facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility, in the form of a discharge plan which addresses the medical needs of the resident and how those needs will be met after discharge. (10 NYCRR 415.3[i][1][vi]). The facility must also 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 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 Resident has failed to pay for his stay after being given reasonable notice that payment is due. The proposed discharge location is to DSS. The Facility has presented sufficient evidence that the Appellant's discharge is necessary, but failed to present any evidence to support discharging him to DSS.

The evidence shows that the Resident has incurred charges in excess of \$ [REDACTED]. The Resident does not dispute that the Facility provided him with notice of his obligation to pay, and the consequences of his failure to pay; but he maintains his belief that Medicare would cover the costs of his stay in the facility.

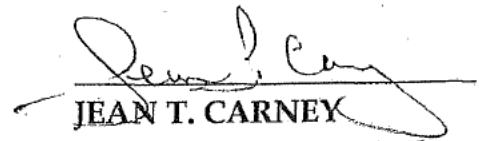
The Facility never addressed the issue of whether the proposed discharge location was appropriate. There was no evidence that the Resident's health had improved sufficiently so that he no longer needs the services provided by the Facility. There was no evidence showing that the Resident's medical needs would be met after discharge; and no evidence showing what efforts were made to find an appropriate discharge location.

The Facility made no effort whatsoever to show that the discharge plan is appropriate, and therefore the Discharge Notice is dismissed and the Resident's appeal is granted.


DECISION

1. The Facility has met its burden on grounds, that the has failed to pay his NAMI as required.
2. The Facility has not shown that the discharge plan is appropriate and may not discharge the Resident.
3. This Decision may be appealed to a court in the appropriate jurisdiction.
4. This Decision shall become effective upon service to the parties.

**DATED: Albany, New York
July 13, 2023**


JEAN T. CARNEY
Administrative Law Judge

TO: Stephanie Tolle, DSW
Greene Meadows Nursing and Rehabilitation Center
161 Jefferson Heights
Catskill, NY 12414


c/o Greene Meadows Nursing and Rehabilitation Center
161 Jefferson Heights
Catskill, NY 12414