

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



Department of Health

KATHY HOCHUL
Governor

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

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

September 18, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
C/O Mayfair Care Center
100 Baldwin Road
Hempstead, New York 11550

Dan Okrent, Esq.
Senior Citizen Law Project
1 Helen Keller Way, 5th Floor
Hempstead, New York 11550

Barbara Phair, Esq.
Abrams Fensterman, LLP
3 Dakota Drive Suite 300
Lake Success, New York 11042

Richard Sherman, Administrator
Mayfair Care Center
100 Baldwin Road
Hempstead, New York 11550

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: nm
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

-----X

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

[REDACTED]

Appellant,

from a determination by

MAYFAIR CARE CENTER

Respondent,

to discharge him from a residential health :
care facility. :

-----X

COPY

DECISION

Hearing Before: Matthew C. Hall
Administrative Law Judge

Held via WEBEX Videoconference

Hearing Dates: September 13, 2023

Parties: Mayfair Care Center
100 Baldwin Road
Hempstead, New York 11550
By: Barbara Phair, Esq.

[REDACTED]

By: Dan Okrent, Esq.

JURISDICTION

Mayfair Care Center (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) Section 415.3(i).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and Discharge Notice

Facility Exhibits: 1 - Physicians Progress Notes
2 - Interdisciplinary Discharge Plan
3 - Physical Therapy Discharge Summary
6 - Social Services Note
7 - Resident Invoice
8 - Community Medicaid Acceptance

Facility Witnesses: Irum Chaudry, Attending Physician
Elilan Ramezani, Director of Rehab
Carol Johnson, Social Worker
Yitty Hoffman, Medicaid Coordinator
Melissa Martinez, Finance Coordinator
Shalini Roman, Social Worker

Appellant's Exhibits: None

Appellant's Witnesses: None

ISSUE

Has the Facility established that the determination to discharge the Appellant is correct?

FINDINGS OF FACT

Citations in parentheses refer to testimony (T) of witnesses and exhibits (Exhibit) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant was admitted to the Facility on [REDACTED] 2022, with primary diagnoses including [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Ex. 1.)

2. The Appellant received physical therapy at the Facility and completed her therapy goals on [REDACTED] 2023. The Appellant is alert and oriented with a BIMS score of [REDACTED]/15. (ALJ I.)

3. By notice dated [REDACTED], 2023, the Facility determined to discharge the Appellant on [REDACTED], 2023, on the grounds

of failure to pay the Facility after being given reasonable notice. (ALJ I. Ex.7.)

4. During the Appellant's stay at the Facility, from [REDACTED] 2023, to [REDACTED] 2023, the Appellant has refused to pay her bill and has refused to discuss discharge planning or provide resources to pay for her outstanding bill. During this period, the Appellant has amassed an outstanding debt of \$ [REDACTED] due to the Facility. (Ex. 7.; T. Hoffman, Martinez.)

5. The Facility determined to discharge the Appellant to [REDACTED] County Department of Social Services located at [REDACTED] [REDACTED] [REDACTED] (ALJ I.)

6. Discharge to a motel or an assisted living facility was not possible because the Appellant refused to discuss the matter and would not accept or sign any paperwork presented to her by the Facility. (ALJ I.; T. Hoffman, Johnson.)

7. The Appellant no longer requires residential health care. She has met her goals and has no skilled needs. She ambulates without an assistive device and requires no assistance with her Activities of Daily Living (ADLs). She is independent in all areas. (ALJ I., Ex. 6.)

8. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending

Physician, that discharge to the community, including to a shelter, is appropriate for Appellant. (Ex. 6, T. Johnson, Hoffman.)

9. The Appellant remains at the Facility pending the outcome of this appeal.

APPLICABLE LAW

A residential health care facility (also referred to in the Department of Health Rules and Regulations 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 Sections 2801(2)(3); 10 NYCRR Section 415.2(k).

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR Section 415.3[i][1]).

The Facility alleges the Appellant's discharge is permissible pursuant to 10 NYCRR Section 415(i)(1)(i)(b), which states in relevant part:

[T]ransfer and discharge shall be permissible when the resident has failed, after reasonable and appropriate notice, to pay for...a stay at the facility. For a resident who becomes

When the Appellant was initially admitted, her care at the Facility was covered by Medicare. The Appellant's Medicare coverage lasted for a limited amount of time and by [REDACTED] [REDACTED] 2023, the Appellant's Medicare coverage was discontinued. From that point forward, the Appellant has made no payments for her care at the Facility. (Ex. 7; T. Hoffman, Martinez.)

The Appellant does not deny that she is required to pay for her care at the Facility and admits that she has paid nothing to the Facility. At the time of this hearing, the Appellant had been receiving monthly social security benefits and would be eligible for Medicaid if she were to apply. She has been approached several times by the Facility to get her to apply for Medicaid, but the Appellant would not cooperate. The reason given by the Appellant is that she does "not want to lose her he social security money." She has "refused to sign any forms as she is concerned with losing her SSI." She has continued to live at and receive care from the Facility rent free since [REDACTED] (Ex. 6, 7; T. Hoffman, Martinez.)

The Facility intends to discharge the Appellant to the [REDACTED] County Department of Social Services. She was presented by the Facility with an opportunity to transfer to the [REDACTED] Assisted Living Facility. However, when presented with application forms for such a transfer, the Appellant again refused to cooperate.

Additionally, the Appellant no longer requires the care of a skilled nursing facility. She is independent in her ADLs, transfers independently, ambulates without assistive devices, and can administer her own medications. It is the professional opinion of the Appellant's caregivers at the Facility, including the Facility's attending physician, psychologist, rehabilitation director, registered nurse supervisor, and social worker, that discharge to the community, including to a shelter, is appropriate for the Appellant. (Ex. 6, T. Johnson, Hoffman.)

The Facility has proven its determination to discharge the Appellant is correct due to the Appellant's failure to pay for or provide alternatives to pay for her care at the Facility. Discharge to a shelter is appropriate as the Appellant is both mentally and physically capable of caring for herself.

CONCLUSION

Mayfair Care Center has established that its determination to discharge the Appellant is correct and the proposed discharge location is appropriate.


DECISION



The appeal by Appellant is therefore DENIED.

The Facility is authorized to discharge the Appellant upon receipt of this decision.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

DATED: Albany, New York
September 15, 2023


Matthew C. Hall
Administrative Law Judge

To:  
C/O Mayfair Care Center
100 Baldwin Road
Hempstead, New York 11550

Dan Okrent, Esq.
Senior Citizen Law Project
1 Helen Keller Way, 5th Floor
Hempstead, New York 11550

Richard Sherman, Administrator
Mayfair Care Center
100 Baldwin Road
Hempstead, New York 11550

Barbara Phair, Esq.
Abrams Fensterman, LLP
3 Dakota Drive Suite 300
Lake Success, New York 11042