



**Department
of Health**

ANDREW M. CUOMO
Governor

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

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

June 8, 2018

CERTIFIED MAIL/RETURN RECEIPT

Seneca Nursing and Rehabilitation Center
C/o Katerina M. Kramarchyk, Esq.
Michael Scott-Kristensen, Esq.
69 Cascade Drive, Suite 307
Rochester, New York 14614

[REDACTED]
C/o Seneca Nursing and
Rehabilitation Center
200 Douglas Drive
Waterloo, New York 13165

RE: In the Matter of [REDACTED] – 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 / eac
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

[REDACTED]

Appellant,

from a determination by

**Seneca Nursing and Rehabilitation
Center, LLC,**

Respondent,

to discharge her from a residential
health care facility.

COPY

Decision
After Hearing

Hearing before:

John Harris Terepka
Administrative Law Judge

Held at:

Seneca Nursing and Rehabilitation Center
200 Douglas Drive
Waterloo, New York 13165

Hearing date:

June 4, 2018

Parties:

Seneca Nursing and Rehabilitation Center
200 Douglas Drive
Waterloo, New York 13165

By: Katerina M. Kramarchyk, Esq.
Michael Scott-Kristansen, Esq.
Pullano & Farrow
69 Cascade Drive, Suite 307
Rochester, New York 14614

[REDACTED]

Seneca Nursing and Rehabilitation Center

By: [REDACTED]

JURISDICTION

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

SUMMARY OF FACTS

1. Respondent Seneca Nursing and Rehabilitation Center is a residential health care facility, or nursing home, located in Waterloo, New York. Appellant [REDACTED] was admitted to the facility in [REDACTED] 2016.
2. Medicare payment for the Appellant's care ended in [REDACTED] 2016. The Appellant applied for Medicaid and was accepted effective [REDACTED] 2017. Seneca County Division of Human Services, which processed her application, determined that there had been an uncompensated value of transfers in the amount of over [REDACTED] made during the five years before the Appellant's Medicaid application. Application of this amount to the Appellant's coverage resulted in over [REDACTED] months of limited coverage. Medicaid will begin to make payments for nursing home care in [REDACTED] 2018. (Exhibit 2.)
3. After her Medicare coverage expired in [REDACTED] 2016, the Appellant failed to make payment for her care. No payments for charges in excess of [REDACTED] per month were made until [REDACTED] 2017, when the Appellant began making payments to reduce a balance of over [REDACTED] (Exhibit 1.)
4. The balance owed by the Appellant to the Respondent as of the date of this hearing was in excess of [REDACTED] (Exhibit 1.) The Respondent has repeatedly advised

the Appellant and he of the need to make payment on the outstanding bill. (Exhibits 4, 8, 9.)

5. By notice dated , 2018, the Respondent advised the Appellant that it had determined to discharge her on 2018, on the grounds that she has failed, after reasonable and appropriate notice, to pay for her stay at the facility. (Exhibit ALJ I.)

6. The Appellant continues to require nursing home care. The Respondent's discharge plan is to transfer her to a nursing home in offering a similar level of care to that provided at the Respondent's facility. has agreed to admit her. (Exhibit 13.) The Respondent's discharge plan includes arrangements for transfer, medications, travel and other logistical assistance to be provided as needed. (Exhibit 14.)

7. At the hearing, the Respondent agreed to delay the date of transfer from to 2018. The Appellant remains at Seneca Nursing and Rehabilitation Center pending the outcome of this proceeding.

ISSUES

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

DISCUSSION

A residential health care facility (RHCF), or nursing home, is a residential facility providing nursing care to sick, invalid, infirm, disabled or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital. PHL 2801; 10 NYCRR 415.2(k).

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR 415.3(h). The Respondent relies on 10 NYCRR 415.3(h)(1)(i)(b), which provides, in pertinent part:

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 presented documentary evidence (Exhibits 1-16) and testimony from its business manager, Jessica Mull and social worker, Debbie Marchitell. The Appellant's [REDACTED] and representative (Exhibit 3) [REDACTED] also testified, and the Appellant was present. A certified Long Term Care Ombudsman, Gerald Macaluso, participated at the Appellant's request. A digital recording of the hearing was made. The Respondent has the burden of proving that the transfer is necessary and the discharge plan appropriate. 10 NYCRR 415.3(h)(2)(iii).

The Appellant's care was covered by Medicare when she was admitted in [REDACTED] 2016 and until [REDACTED] 2016. (Exhibit 1.) Medicaid will begin to make payments for her nursing home care in [REDACTED] 2018. Because she has Social Security income, the Appellant will thereafter also be responsible for a monthly contribution, the "net available monthly income" (NAMI), for the cost of her care in the amount of approximately [REDACTED]. That leaves a gap from [REDACTED] 2016 through [REDACTED] 2018 for which the Appellant is responsible for the full cost of her nursing home care. The absence of Medicaid coverage is

attributable to the Appellant's own resources and to the county's calculation of the uncompensated value of transfers made by her during the five year "look back" period before her Medicaid application. (Exhibit 2.)

The Respondent presented an account showing that the Appellant's balance for care at its facility, in a monthly amount in excess of [REDACTED], grew steadily because no payments were made after [REDACTED] 2016 when Medicare coverage ended. In [REDACTED] 2017 the Appellant paid [REDACTED] and made [REDACTED] payments in the approximate amount of [REDACTED] each over the next [REDACTED] months. On [REDACTED] 2018, the date of the discharge notice, a payment of [REDACTED] was made. Another [REDACTED] was paid before this hearing took place on June 4. (Exhibit 1.) The Appellant does not dispute the accuracy of the Respondent's accounting of the charges and the remaining balance owed.

The Appellant has made significant payments, in the total amount of over [REDACTED] since [REDACTED] 2017, but not enough to become current. Although the Appellant suggested at the hearing that Seneca County's uncompensated value of transfers calculation was not accurate, there is no pending appeal of that determination. (Exhibit 6.) The evidence is uncontroverted and fully supports the Respondent's claim that the balance due as of the date of this hearing is over [REDACTED].

The outstanding balance has not been paid nor have the parties been able to reach an agreement that might address it and enable the Appellant to remain at the Seneca Nursing and Rehabilitation Center. The Respondent has met its burden of establishing valid grounds for discharge pursuant to 10 NYCRR 415.3(h)(1)(i)(b).

With regard to the appropriateness of the discharge plan, there is no dispute that the Appellant continues to require nursing home care. The Respondent proposes to

transfer her to [REDACTED], another nursing home providing a similar level of care to Seneca Nursing and Rehabilitation Center. The Appellant did not dispute the testimony of the Respondent's social worker Debbie Marchitell, that [REDACTED] is an appropriate nursing home offering an appropriate level of care. The Appellant's main concern is that visiting by family would be more difficult because [REDACTED] is [REDACTED] drive from the [REDACTED] area.

The Respondent did make efforts to identify a nursing home in the [REDACTED] area, contacting five or six facilities, but was unable to find one to accept the Appellant. (Exhibits 10, 12.) Although the Appellant and her family are encouraged to pursue a relocation to any other facility of their choosing, they are not entitled to require the Respondent to continue to provide care while they do so, with such a large unpaid bill and an appropriate discharge plan in place. The proposed transfer to [REDACTED] a facility with a similar level of care, meets the Respondent's obligation to provide an appropriate discharge plan.

At the hearing, both parties indicated a willingness to explore the possibility of yet resolving this matter by agreeing to a payment arrangement that would allow the Appellant to remain at Seneca Nursing and Rehabilitation Center, or by securing a different discharge location. Although there is no pending appeal of the February 2018 Medicaid determination (Exhibit 2), the Appellant has some hopes of obtaining a revision of the uncompensated transfers amount. The Respondent agreed to postpone the proposed discharge date from [REDACTED] to [REDACTED] 2018 in order to afford the parties an opportunity to resolve the financial issues or to develop an alternative discharge plan.

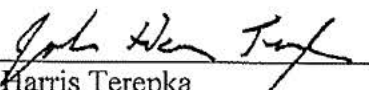
DECISION:

Respondent Seneca Nursing and Rehabilitation Center has established valid grounds for the discharge of Appellant [REDACTED] and has established that the discharge plan is appropriate.

The Respondent is authorized to discharge the Appellant on or after [REDACTED] 2018.

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

Dated: Rochester, New York
June 7, 2018


John Harris Terepka
Administrative Law Judge