



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

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

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

October 16, 2018

**CERTIFIED MAIL/RETURN RECEIPT**

Kelliann Murphy, DSW  
Northern Metropolitan Residential  
Health Care Facility  
225 Maple Avenue  
Monsey, New York 10952

[REDACTED]  
Northern Metropolitan Residential  
Health Care Facility  
225 Maple Avenue  
Monsey, New York 10952

**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  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cmg  
Enclosure

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

**COPY**

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

[REDACTED]

Appellant,

from a determination by

**Northern Metropolitan Residential  
Health Care Facility,**

Respondent,

to discharge her from a residential  
health care facility.

**DECISION**

Hearing Before: Natalie J. Bordeaux  
Administrative Law Judge

Hearing Location: Northern Metropolitan Residential Health Care Facility  
225 Maple Avenue  
Monsey, New York 10952

Hearing Date: September 20, 2018

Parties: Northern Metropolitan Residential Health Care Facility  
By: David Singer, Administrator  
225 Maple Avenue  
Monsey, New York 10952

[REDACTED] M.D.  
*Pro Se*

**JURISDICTION**

By notice dated ██████████ 2018, Northern Metropolitan Residential Health Care Facility (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge ██████████ (the Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(h).

**HEARING RECORD**

Facility witnesses:

David Singer, Administrator  
Kelliann Murphy, Director of Social Work

Facility exhibits:

- 1 ██████████ 2018 Discharge Notice)
- 2 ██████████ 2018 Notice of Medicaid Discontinuance)
- 3 (Invoices with Accrued Unpaid Balance)
- 4 ██████████ 2017 Notice of Increased NAMI)
- 5 (Resident Face Sheet)
- 6 ██████████ 2016 Social Security Award Letter)

Appellant witnesses:

██████████, Appellant  
██████████ Appellant's friend

Appellant exhibits:

None

ALJ exhibits:

- I (Notice of Hearing and Discharge Notice)
- II (Nursing home referrals sent on the Appellant's behalf)

Digital recordings of the hearing and the October 10, 2018 conference call were made, and are referenced in this decision as "Hearing" and "CC", respectively.

**ISSUES**

Has Northern Metropolitan Residential Health Care Facility established that its determination to discharge the Appellant was necessary and the discharge plan appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED] year-old woman who was admitted to the Facility on [REDACTED] 2014. (Facility Exhibit 5.)
2. From the date of admission through [REDACTED] 2018, the Appellant was a Medicaid recipient. (Facility Exhibits 2, 3 and 5.)
3. Commencing [REDACTED], 2015, the Appellant was required to pay the Facility a net available monthly income (NAMI) of [REDACTED] which, pursuant to Medicaid budgeting rules, constituted her financial responsibility towards the cost of her nursing home stay. She paid the Facility [REDACTED] each month until [REDACTED] 2018, when her monthly payment increased to [REDACTED] (Facility Exhibits 3 and 4.)
4. From [REDACTED] 2018 through [REDACTED] 2018, the Appellant's NAMI increased to [REDACTED] (Facility Exhibits 3 and 4.)
5. Effective [REDACTED] 2018, the Appellant's Medicaid was discontinued due to excess resources in an amount of [REDACTED] (Facility Exhibit 2.)
6. Since the date of the Appellant's Medicaid discontinuance, she has incurred a daily charge of [REDACTED] for her continued stay at the Facility. (Facility Exhibit 3.)
7. By notice date [REDACTED] 2018, the Facility determined to discharge the Appellant on [REDACTED] 2018 because she has failed, after reasonable and appropriate notice, to pay for her stay. The notice proposes to discharge the Appellant to [REDACTED] [REDACTED]. (Facility Exhibit 1.)
8. As of [REDACTED] 2018, the Appellant has an outstanding balance of [REDACTED] reflecting the accrued unpaid portion of her NAMI from [REDACTED] 2015 through [REDACTED] 2018 and the daily cost of her nursing home stay since her Medicaid ended. (Facility Exhibit 2.)

9. The Appellant remains at Northern Metropolitan Residential Health Care Facility pending the outcome of this appeal.

**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(h) 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:

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(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 by substantial evidence that the discharge was necessary, and the discharge plan was appropriate. 10 NYCRR § 415.3(h)(2)(iii); State Administrative Procedure Act § 306(1).

**DISCUSSION**

The Appellant was admitted to the Facility on ██████████, 2014. She was a Medicaid recipient on the date of admission, with Medicaid coverage continuing through ██████████ 2018.

(Facility Exhibits 2 and 5.) By notice dated ██████████ 2018, the Facility advised the Appellant of its determination to discharge her on ██████████ 2018 because she has failed, after reasonable and appropriate notice, to pay for her stay at Northern Metropolitan Residential Health Care Facility. (Facility Exhibit 1.) The Appellant's growing outstanding balance at the Facility consists of unpaid portions of a NAMI while receiving Medicaid coverage, along with a daily private pay rate of ██████████ for each day of her continued stay since ██████████ 2018 (the date upon which her Medicaid coverage ended.) (Facility Exhibit 3.)

The Appellant does not disagree with the decision of Rockland County Department of Social Services (DSS) to discontinue her Medicaid coverage due to excess resources. She confirmed that she received a ██████████ (Hearing @ 14:20.) While the Appellant concedes that she has the ability to pay the outstanding amount owed, the Appellant intends to place her income in a trust instead. The Appellant has not formally retained a trust-making attorney and no trust instrument has yet been created. (Hearing @ 53:24.) Nevertheless, she believes that a trust will preserve her ██████████ ██████████ rendering her eligible for Medicaid coverage retroactively and securing payment to the Facility from the Medicaid Program. Once the Facility receives those payments, the Appellant expects her own financial liability to decrease substantially. (Hearing @ 47:20.)

The Appellant's outstanding debt to the Facility is quickly approaching the excess resources amount ██████████ stated in the Appellant's Medicaid discontinuance notice. (Hearing @ 21:43.) As explained in the ██████████ 2018 notice from the DSS, the Appellant may qualify for Medicaid by offsetting the excess resources amount with proof of unpaid medical expenses, expenses that she would then pay with her excess resources. (Facility Exhibit

2.) The Appellant insisted that her planned course of action would yield more fruitful results since she would not be required to pay her nursing home bill. (Hearing @ 49:36.)

The evidence clearly shows that the Appellant has personal funds available to pay for the cost of her stay, and that the use of such funds for her outstanding medical bills would enable her to regain her Medicaid coverage. Her monthly payment of [REDACTED] constitutes less than [REDACTED] of total monthly charges and she has refused to remit additional sums. The Facility has established that the Appellant's discharge for failure to pay for the cost of her stay was necessary.

Regarding its discharge plan, the Facility purports to discharge the Appellant to [REDACTED] [REDACTED] Facility Exhibit 1.) Based upon information made available to the Facility, the Appellant has no home in the community and requires skilled nursing assistance, thereby requiring a transfer to another residential health care facility. (Hearing @ 59:06.)

[REDACTED] the Appellant's friend, testified that the Appellant lacks the courage to regain her independence and chooses to remain in a nursing home setting instead of returning to her home in the community. (Hearing @ 54:16, 1:09:33.) The Appellant clarified that a rental apartment in [REDACTED] "may be available" if she should need it, yet she does not want to live in [REDACTED] because she would be disqualified from receiving New York Medicaid coverage. (Hearing @ 1:21:07.) The Appellant's failure to supply basic information, such as a street address, for any such home, precludes the Facility from incorporating this new information into its discharge planning efforts. (Hearing @ 1:19:55.)

The Appellant adamantly opposed the proposed discharge location in [REDACTED] because it would separate her from her [REDACTED] Facility Administrator David Singer explained that procuring placement for the Appellant in another

nursing home would be extremely difficult, if not impossible, due to her unwillingness to pay. Director of Social Work Kelliann Murphy stated that ██████████ another facility in ██████████ retracted its acceptance of the Appellant's placement upon notification that the Appellant had not paid her nursing home bill. (Hearing @ 1:04:56.)

The parties were afforded three weeks in which to attempt to procure a placement for the Appellant in a nursing home located near her religious community. The Appellant was encouraged to actively participate in the discharge process and find nursing homes or other discharge locations which she believes would be acceptable. (Hearing @ 1:08:35.)

During a conference call with the parties on October 10, 2018, Ms. Murphy established efforts to obtain placement for the Appellant at twenty nursing homes located in or around Rockland County, aside from ██████████ (which had already rejected the Appellant's placement). Not one of the nursing homes contacted from ██████████ through ██████████ 2018 is willing to accept the Appellant.<sup>1</sup> (CC @ 0:00:58.) The Appellant has not suggested other nursing homes or community-based placements. (CC @ 3:30.)

The Facility attempted to accommodate the Appellant's social and spiritual needs in its discharge planning efforts. However, the Appellant's failure to accept a community-based placement, combined with her unwillingness to pay for the cost of her stay, has significantly restricted possible discharge locations for the Appellant, such that transfer to a nursing home in ██████████ is not only medically appropriate, but reasonable.

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<sup>1</sup> Ms. Murphy submitted documentation in advance of the conference call that denotes multiple attempts to obtain responses from those twenty nursing homes and the outcome of her efforts. (ALJ Exhibit II.) The Appellant was given a copy of Ms. Murphy's documentation. (CC @ 0:00:53.)



**CONCLUSION**

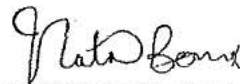
The Facility established that the Appellant has failed, after reasonable and appropriate notice, to pay for her nursing home stay. The Appellant has intentionally chosen not to apply her [REDACTED] towards her nursing home bills, insisting that she requires more time to finalize a trust agreement that might eliminate her nursing home bill and allow her to regain Medicaid eligibility. She does not have the right to remain at the Facility until a yet-to-be created trust instrument is approved by DSS and her Medicaid coverage is restored.

The Facility has also established having exhausted efforts to transfer the Appellant to another nursing home within [REDACTED] and neighboring counties. Its diligent attempts to procure a socially acceptable placement for the Appellant were unsuccessful. The Facility was required to provide a discharge plan which addresses the Appellant's medical needs and how these will be met after discharge. 10 NYCRR § 415.3(h)(1)(vi). The discharge plan is appropriate as it ensures that the Appellant will continue to receive skilled nursing care. The Facility's determination is therefore sustained.

**DECISION**

Northern Metropolitan Residential Health Care Facility has established that its determination to discharge the Appellant was necessary and its discharge plan appropriate.

Dated: October 16, 2018  
New York, New York



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Natalie J. Bordeaux  
Administrative Law Judge