



**Department
of Health**

ANDREW M. CUOMO
Governor

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

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

November 13, 2020

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Quantum Rehabilitation and
Nursing Care Center
63 Oakcrest Avenue
Middle Island, New York 11953

Paul Mullman, Director of Social Work
Quantum Rehabilitation and
Nursing Care Center
63 Oakcrest Avenue
Middle Island, New York 11953

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,

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

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

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

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

██████████,

Appellant,

DECISION

from a determination by

Quantum Rehabilitation and Nursing Care Center

Respondent,

to discharge her from a residential health care facility.

Before: Rayanne L. Babich
Administrative Law Judge (ALJ)

Date: October 22, 2020

Held at: Webex videoconference

Parties: ██████████, Appellant
c/o Quantum Rehabilitation and Nursing Care Center
63 Oakcrest Avenue
Middle Island, New York 11953

Paul Mullman, Director of Social Work
Quantum Rehabilitation and Nursing Care Center
63 Oakcrest Avenue
Middle Island, New York 11953

JURISDICTION

By notice dated ██████████ 2020, Quantum Rehabilitation and Nursing Care Center (Facility), a residential health care facility subject to Article 28 of New York Public Health Law (PHL), sought to discharge ██████████ (Appellant) from the Facility. The Appellant requested an appeal with the New York State Department of Health. 10 NYCRR 415.3(i). The hearing was

held and in accordance with the PHL; Part 415 of 10 NYCRR; Title 42, Part 483 of the United States Code of Federal Regulation (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR. The hearing was digitally recorded. The hearing was held on October 22, 2020 due to the Appellant's hospitalization that occurred after the Notice of Discharge was issued. The record closed on October 30, 2020.

RECORD

- ALJ Exhibits: I – Letter with Notice of Hearing
II – Notice of Discharge dated [REDACTED] 2020
- Facility Exhibits: 1 – Facility invoice dated [REDACTED], 2020
2 – Department of Social Services NAMI budget from [REDACTED], 2020 through [REDACTED], 2020
3 – Department of Social Services NAMI budget from [REDACTED] 2019 through [REDACTED], 2019
4 – Nurse Practitioner Progress Note dated [REDACTED] 2020
5 – Facility invoice dated [REDACTED] 2020
- Appellant Exhibits: None
- Facility Witnesses: Paul Mullman, Director of Social Work
Karen Munoz, Medicaid Finance Coordinator
- Appellant Witnesses: [REDACTED]

FINDINGS OF FACT

1. Quantum Rehabilitation and Nursing Care Center is a residential health care facility as defined under PHL §2801(3).
2. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2019 for short-term rehabilitation to provide wound care, and physical and occupational therapies. Her diagnoses include [REDACTED], and [REDACTED]. [Ex 4; R@28:25, 29:21.]

3. Beginning [REDACTED] 2019, the cost of Appellant's care was covered under Medicare and Medicaid. [Ex 2, 3; R@45:09.]
4. On [REDACTED] 2020, the Appellant's admission was changed from short-term care to chronic care under Medicaid because she continued to require ongoing skilled nursing services. [Ex 3; R@46:18; 51:41.]
5. The Appellant continues to require skilled nursing services for wound care in a nursing home. However, she has met her physical and occupational therapy goals and has been discharged from these services. The Appellant is currently independent in her activities of daily living but ambulates with a wheelchair and walker. [Ex 4; R@31:03; 1:12:23.]
6. On [REDACTED], 2020, the Facility issued a Notice of Discharge to the Appellant citing the "failure to pay and charges are not in dispute, and Medicaid is not pending as evidenced by: not turning over NAMI." The proposed discharge location is [REDACTED], located in [REDACTED]. [Ex II; R@31:42; 40:19.]
7. The Appellant has not paid any monies toward the cost of her care. The outstanding unpaid balance owed to the Facility as of [REDACTED] 2020 is [REDACTED]. [Ex 5; R@1:00:37.]

ISSUES

Has the Facility met its burden to show that its determination to discharge the Appellant was proper due to nonpayment and the discharge plan is appropriate?

APPLICABLE LAW

1. A residential health care facility, or 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).

2. Pursuant to 10 NYCRR 415.3(i)(1)(i)(b), a transfer or discharge is 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;

3. Under 10 NYCRR 415.3(i)(1), with regard to transfer and discharge, the facility shall:

(vi) 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 these will be met after discharge, and provide a discharge summary pursuant to section 415.11(d) of this Title; and

(vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.

4. The Facility has the burden of proof "that the discharge or transfer is/was necessary and the discharge plan appropriate." 10 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

Grounds for Transfer

The Facility has met its burden to show that the transfer of the Appellant to the [REDACTED] [REDACTED] is appropriate due to her failure to pay the outstanding balance owed to the Facility totaling [REDACTED]. A transfer or discharge is appropriate when, after notice, the resident has failed to pay for a stay at the facility, and there is no dispute as to the funds owed. 10 NYCRR 415.3(i)(1)(i)(b). The Facility submitted into evidence an invoice showing the balance due. [Ex 5.] Upon her admission, the Appellant was provided notice of the cost of care by Karen Munoz, Medicaid Finance Coordinator. [R@45:09.] Ms. Munoz testified that the Appellant had Medicare and Medicaid when she was admitted, and the Facility assisted the Appellant with converting her Medicaid from community care to institutional care to ensure her Medicaid would be applied to the cost of her care. [Ex 3, R@45:44.] The Appellant was provided with a written Notice of Intent to Establish Liability from Medicaid which documented her Net Available Monthly Income (NAMI) contribution beginning on the date of her admission. [Ex 3; R@46:18.] As the Appellant's financial liability was updated from Medicaid on [REDACTED] 2019 and [REDACTED] 2020, a written copy of the Medicaid documentation was hand delivered to the Appellant. [Ex 2, 3; R@59:23.] Ms. Munoz testified that she made several attempts to collect payment by meeting with the Appellant at the Facility and copies of the invoice were mailed to the next of kin provided by the Appellant. [R@58:15, 1:21:51.] However, the Appellant has declined to pay any of the NAMI amount due each month. [Ex 1, 5; R@.]

The Appellant does not dispute the amount due to the Facility. [R@1:15:23.] At the time of her admission to the Facility, the Appellant's monthly contribution was \$ [REDACTED] [Ex 3; R@46:18.] These charges accrued through [REDACTED] 2019 and totaled \$ [REDACTED] [Ex 5.] On [REDACTED]

█ 2019, the Appellant's Medicaid changed to chronic care, resulting in NAMI charges beginning on █, 2019 through █, 2020, with a total of \$ █ [Ex 5; R@46:50, 51:41.]

The Appellant testified that she believed Medicaid was covering the entire cost of her care but that she did not "know the specific numbers." [R@1:14:11.] The Appellant also testified that she was provided copies of invoices in the █ of 2019 which were provided by Ms. Munoz. [R@1:14:53.] However, the Appellant offered no explanation why she has not paid any amount toward the cost of her care. The Facility has a right to be paid for nursing and medical services it has provided the Appellant.

Discharge Plan

The Facility has met its burden to show that its discharge plan to transfer the Appellant to the █ is appropriate. [ALJ.II.] █, Nurse Practitioner at the Facility, documented in the Appellant's medical record that, after her examination of Appellant and consultation with the Facility physician, the Appellant is appropriate and "medically stable for discharge to another facility." [Ex 4.] Paul Mullman, Director of Social Work, testified that the discharge location is ready and willing to accept the Appellant, and the services it provides are the same or similar to those the Appellant is currently receiving. [R@40:19, 40:54.] Mr. Mullman also testified that the Facility referred the Appellant to approximately 15 skilled nursing facilities in both Suffolk and Nassau counties. The Appellant was accepted to one facility in █ county and three facilities in █ county. [R@38:33, 39:31.]

The Appellant argued that she does not agree to the proposed discharge location because she has not been able to visit the location and does not know which services are provided. [R@1:04:43, 1:10:21.] The Appellant also testified that her main care need is wound care and she

prefers the nursing staff who currently attend to her daily dressing changes. [R@1:10:50.] However, Mr. Mullman testified that visits at the discharge location are prohibited due to the current COVID-19 pandemic but he will inquire about a virtual tour with the discharge location. [R@1:18:25.] Also, Mr. Mullman testified that the Facility will be able to provide the same skilled services the Appellant is currently receiving. [R@40:19.] The Facility has successfully identified the [REDACTED] as a suitable location to meet the Appellant's needs. The Facility's plan to discharge the Appellant to [REDACTED] is appropriate.

The Facility is authorized to transfer the Appellant in accordance with its discharge plan to [REDACTED].

ORDER.

The Facility is authorized to discharge the Appellant to the location identified in the notice of discharge and in accordance with its discharge plan.

Dated: November 13, 2020
Albany, New York



Rayanne L. Babich
Administrative Law Judge

TO: [REDACTED], Appellant
c/o Quantum Rehabilitation and Nursing Care Center
63 Oakcrest Avenue
Middle Island, New York 11953

Paul Mullman, Director of Social Work
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