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**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

October 26, 2020

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

Vickey Johnson
Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

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

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 :
: **Terence Cardinal Cooke,** :
: Respondent, :
: to discharge him from a residential health care facility. :
:

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DECISION

Hearing Before: Ann H. Gayle
Administrative Law Judge

Held: Via Cisco Webex

Hearing Date: October 1, 2020¹

Parties: Terence Cardinal Cooke
By: Vickey Johnson, Finance Director


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¹ The hearing, initially scheduled for September 9, 2020, was adjourned at Appellant's request to give Appellant the opportunity to seek legal representation.

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as Terence Cardinal Cooke (“Respondent” or “Facility”) 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.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(i). Respondent determined to discharge █ █ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(i)(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.

Appellant appealed the discharge determination to the New York State Department of Health and a hearing on that appeal was held. Pursuant to §415.3(i)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate; the standard of proof is substantial evidence. State Administrative Procedure Act §306.1. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact; it is less than a preponderance of the evidence but more than mere surmise, conjecture or speculation... Put differently, there must be a rational basis for the decision. Stoker v. Tarentino, 101 A.D.2d 651, 652, 475 N.Y.S.2d 562, 564 [App. Div. 3d Dept. 1984], mod. 64 N.Y.2d 994, 489 N.Y.S.2d 43.

A transcript of the hearing was made part of the record. Appellant testified on his own behalf. Barry Vertal from the NYS Ombudsman office assisted Appellant at the hearing. Finance Director Vickey Johnson, Social Worker ██████████ and Nurse Manager Marcyenda Cupid testified for Respondent.

The following documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ and Facility Exhibits:

ALJ

- I: Notice of Hearing with attached Notice of Discharge/Transfer
- II: ██████████, 2020 letter

Facility:

- 1: Finance documents ██████████/20 bill, eMedNY NAMI amount, correspondence report
- Appellant was given the opportunity but did not offer any documents at the hearing.

ISSUE

Has Terence Cardinal Cooke established that the discharge is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to transcript pages (“T”) and exhibits (“Ex”) found persuasive in arriving at a particular finding.

1. Respondent, Terence Cardinal Cooke, is a residential health care facility located in New York, New York. (Ex I)
2. Appellant, ██████████ age ██████████ was admitted to the Facility on ██████████ 2019. The local Medicaid office established Appellant’s NAMI (Net Available Monthly Income) to be \$████████ per month effective ██████████ 2020, following Appellant’s change in status to “chronic/long-term

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patient.” Respondent provided Appellant with bills and attempted to explain NAMI to Appellant.
(Ex 1; T 27-29, 31-37, 59)

3. By notice dated ██████, 2020 (“discharge notice”), Respondent advised Appellant that it had determined to discharge him on the grounds of failure to pay for his stay at the Facility.

The discharge location is ██████), Respondent’s “██████”
located in ██████ provides care and services equivalent to Respondent.

(Ex I; T 28-29, 45-46, 50-51)

4. Appellant has remained at the Facility pending the outcome of this proceeding.

DISCUSSION

It is a resident’s responsibility and obligation to pay for a stay at a facility. Respondent proved that during the course of Appellant’s stay at the Facility, Facility representatives discussed with and explained to Appellant that he was responsible to pay the monthly NAMI to the Facility, and that Appellant repeatedly stated that he would not make any payments to the Facility, that his insurance would make those payments. Appellant testified that he will not pay for his stay at the Facility because his insurance will pay (T 57, 63).

Mr. ██████ testified that he has been working with Appellant on discharge planning. Community housing was explored but Appellant currently requires facility living. As such ██████ which provides services similar to Respondent was identified as a transfer/discharge location for Appellant. Appellant testified that he does not wish to go to ██████ because it is too far from his physicians. Appellant testified that he might need ██████ and that he has other health issues all of which he wants treated by his community physicians in the NYC area (T 58-61). Ms. Cupid testified that ██████ medical providers who would provide the

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same care as Respondent and that ██████ like Respondent, would send Appellant to outside providers for services such as x-rays that are not available within the facility. (T 45-47, 50-51)

CONCLUSION

Respondent has proven that Appellant has failed, after reasonable and appropriate notice, to pay his portion of his stay at the facility. Appellant's NAMI, his Social Security Disability benefit, is available, and Appellant refuses to pay. Respondent has also proven that ██████ is an appropriate discharge location for Appellant.

DECISION

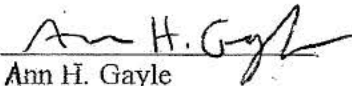
I find that the Facility has proved by substantial evidence that the discharge is necessary and the discharge location is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Terence Cardinal Cooke, is authorized to discharge Appellant in accordance with the ██████, 2020 Discharge Notice.

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: New York, New York
October 26, 2020


Ann H. Gayle
Administrative Law Judge

TO: ██████
c/o Terence Cardinal Cooke
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New York, New York 10029

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