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**Department
of Health**

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 1, 2021

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Martine Center
12 Tibbits Avenue
White Plains, New York 10606

Kelliann Murphy, DSW
Martine Center
12 Tibbits Avenue
White Plains, New York 10606

[REDACTED]

RE: In the Matter of [REDACTED] [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,

Dawn MacKillop-Soller

Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM: cmg
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

MARTINE CENTER

Respondent,

to discharge her from a residential health
care facility.

COPY

DECISION

Hearing Before: Matthew C. Hall
Administrative Law Judge

Held via WEB EX

Hearing Dates: October 28, 2021

Parties: Martine Center
12 Tibbits Avenue
White Plains, New York 10606
By: Kelliann Murphy

By: [REDACTED]

JURISDICTION

By notice dated [REDACTED], 2021, Martine Center (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer Robert Davis (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 the Facility Discharge Notice attached.

Facility Exhibits: 1-7

Facility Witnesses: Kelliann Murphy, Director of Social Work
Henna Mankowitz, Director of Finance
Hadasa Niman, Director of Finance
Yocheved Wagschal

Appellant's Witnesses: [REDACTED] Resident

A digital recording of the hearing via WEB EX was made part of the record.

ISSUE

Has the Facility met its burden of the proving the Appellant has failed to pay for her care and stay at the Facility and is the discharge plan appropriate for the Appellant?

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 is [REDACTED]-years old with diagnoses including [REDACTED]. She is alert and oriented with a BIMS score of [REDACTED]/15. The Appellant was admitted to the Facility on [REDACTED] 2020, for long term care. (ALJ I.)
2. During the period at issue, the Appellant's Net Available Monthly Income (NAMI) amount was set at [REDACTED] [REDACTED] [REDACTED] [REDACTED] per month starting on [REDACTED], 2020. (Ex. 5; T. Niman.)
3. The [REDACTED] County Department of Social Services (DSS) determined the Appellant is required to pay \$ [REDACTED] as

the Appellant's portion of the NAMI for institutional care. The NAMI is based on Appellant's monthly Social Security payments. Medicaid covers the balance of the Appellant's costs at the Facility. (Ex. 5; T. Niman.)

4. The Appellant has failed to pay the full NAMI monthly amount to the Facility from [REDACTED] 2020 through [REDACTED] 2021 and \$ [REDACTED] was owed the Facility to that point. (Ex. 5; T Niman.)

5. The Facility notified the Appellant on several occasions by written notifications and through verbal communications of the amount owed. When approached by the Facility's Financial Director, the Appellant would not allow her in the room. (Ex. 4; T. Niman, Murphy.)

6. As of the date of this hearing, no payments have been made on the balance the Appellant owes. (Ex. 5; T. Niman.)

7. The Appellant still requires residential care, and the proposed discharge location is to the [REDACTED] [REDACTED]

[REDACTED] [REDACTED]. (Ex. 2.)

8. The Facility has worked to locate a facility that is closer to the Appellant and her family, but the Appellant has been uncooperative in this regard. (T. Murphy.)

9. By notice dated [REDACTED], 2021, the Facility advised Appellant that it had determined to discharge the Appellant on the grounds of failure to pay the Facility after being given reasonable notice. (Ex. 2.)

10. 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 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...

Under the hearing procedures at 10 NYCRR Section §415.3(i)(2)(ii), the Facility bears the burden to prove a discharge necessary and the discharge plan is appropriate. Under the New York State Administrative Procedures Act (SAPA) Section 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 (3rd Dept. 1984), appeal dismissed 63 N.Y.2d 649.

DISCUSSION

The Appellant was admitted to the Facility for long term care on [REDACTED], 2020, with diagnoses including: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (ALJ I.)

The [REDACTED] County Department of Social Services (DSS) determined the amount of the Appellant's NAMI to be paid to the Facility is \$ [REDACTED] per month. (Ex. 5.) Due to the Appellant's failure to pay the NAMI amounts over the past year, the Facility states that the amount the Appellant owes the Facility is [REDACTED] through [REDACTED] of 2021. (Ex. 5; T. Niman.)

The NAMI amount is based on the Appellant's Social Security payments. The Appellant disagrees that the NAMI is to be paid to the Facility. Instead, the Appellant refuses to pay the NAMI to the Facility because, "someone from [REDACTED] told (her) that she did not have to pay." When asked who the "someone" was, the Appellant had no response. (T. J. [REDACTED])

When approached by the Facility on several occasions, the Appellant refused to engage in conversation with the Facility's Financial Officer, and indeed, refused to let the Financial Officer into her room. As of the date of this hearing, the Appellant remains steadfast in her determination that she will not pay the NAMI to the Facility to allow her to remain a resident there. (T.

██████████ The Appellant's assertion that "someone" told her she owed no payments to the Facility is not a valid reason not to pay the NAMI amount owed to the Facility for her daily care. (ALJ I; T. ██████████)

The Facility has proven its determination to transfer/discharge the Appellant is correct due the Appellant's failure to pay the required NAMI amount after being given appropriate notices. The Appellant has simply decided not to pay the NAMI amount for the Appellant's stay and care at the Facility. The Facility has met its burden of establishing valid grounds for discharge. 10 NYCRR Section 415.3(h)(1)(i)(b).

The Appellant still needs the medical care of a residential care facility and the proposed discharge location is such a facility. The Facility attempted to find a closer Facility to Appellant's current location. However, due to the Appellant's lack of cooperation in this matter, no other residential care facility closer to the Appellant's current location has been located to this point. (T. Murphy.)

CONCLUSION

Martine Center has established that its determination to discharge/transfer the Appellant is correct and the proposed discharge/transfer location is appropriate.

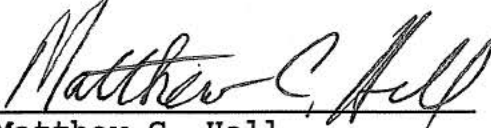
DECISION

The appeal by Appellant is therefore DENIED.

Martine Center is authorized to discharge the Appellant in accordance with the [REDACTED], 2021, 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: Albany, New York
December 1, 2021


Matthew C. Hall
Administrative Law Judge

To: Kelliann Murphy, Director of Social Work
Martine Center
12 Tibbits Avenue
White Plains, New York 10606

[REDACTED] [REDACTED]
c/o Martine Center
12 Tibbits Avenue
White Plains, New York 10606

[REDACTED] [REDACTED] [REDACTED]