



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 2, 2021

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o The New Jewish Home – Sarah Neuman
845 Palmer Avenue
Mamaroneck, New York 10543

Cristina Giarratano, LMSW
Director of Social Work
The New Jewish Home – Sarah Neuman
845 Palmer Avenue
Mamaroneck, New York 10543

Michael Gottlieb, Esq.
444 Madison Avenue, 6th Floor
New York, New York 10022

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,

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

██████████ ██████████

Appellant,

from a determination by

THE NEW JEWISH HOME-SARAH NEUMAN

Respondent,

to discharge her from a residential health
care facility.

COPY

DECISION

Hearing Before:

Sean D. O'Brien
Administrative Law Judge

Held via

WEB EX

Hearing Dates:

November 30, 2021

Parties:

The New Jewish Home-Sarah Neuman
845 Palmer Avenue
Mamaroneck, New York 10543

By: Michael Gottlieb, Esq.
444 Madison Avenue
6th Floor
New York, New York 10022

██████████ ██████████
Pro-se

JURISDICTION

By notice dated [REDACTED] 2021, The New Jewish Home-Sarah Neuman (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [REDACTED] [REDACTED] (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: 1-3

Facility Witnesses: Cristina Giarratano, Director, Social Work
Annette Lobo, Director, Resident Accounts

Appellant's Exhibits: A

Appellant's Witnesses: [REDACTED] [REDACTED]

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] [REDACTED] [REDACTED], and [REDACTED]. The Appellant was admitted to the Facility on [REDACTED], 2021, for long term care after her discharge from [REDACTED] [REDACTED] [REDACTED] for non-payment. (Exhibit 3; T Giarratano).

2. During the period at issue, the Appellant's Net Available Monthly Income (NAMI) amount was set at [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED]

██████████) a month starting in ██████████ 2021.
(Exhibits 1,2; T Lobo).

3. The ██████████ Department of Social Services (DSS) determined the Appellant is required to pay \$██████████ as the Appellant's portion of the NAMI for institutional care. The NAMI is based on Appellant's monthly Social Security and one pension payment. Medicaid covers the balance of the Appellant's costs at the Facility. (Exhibits 1, 2; T Lobo).

4. There is no appeal pending DSS' determination of Appellant's NAMI amount. (Exhibits 1,2; T Lobo).

5. The Appellant has failed to pay the full NAMI monthly amount to the Facility from ██████████ 2021 through ██████████ 2021 and \$██████████ is now owed the Facility. (Exhibit 2; T Lobo).

6. The Facility notified the Appellant on several occasions by written notifications and verbal communications of the amount owed. However, no payments have been made on the balance the Appellant owes. (Exhibits 1, 2; T Lobo, T Giarratano).

7. The Appellant still requires residential care, and the proposed discharge location is the only residential care facility willing to take the Appellant. (T Giarratano).

8. 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. The proposed discharge location is the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Exhibit I; T Giarratano).

9. The Appellant remains in the Facility pending the outcome of this proceeding.

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] [REDACTED] 2021, with diagnoses including [REDACTED] [REDACTED] [REDACTED]. The Appellant's admission to the Facility was after her failed discharge appeal for the non-payment of her NAMI to [REDACTED]. (Exhibit 3; T Giarratano).

In the present case, the [REDACTED] [REDACTED] of Social Services (DSS) determined the amount of the Appellant's NAMI to be paid to the Facility is \$ [REDACTED] per month. (Exhibits 1,2; T Lobo). Due to the Appellant's failure to pay the NAMI amounts over the past three months the Facility states the amount the Appellant owes the Facility is \$ [REDACTED] (Exhibits 1,2; T Lobo).

There is no appeal pending before the DSS regarding the set NAMI amount. The NAMI amount is based on the Appellant's Social Security payment and one pension payment. The Appellant understands the NAMI is to be paid to the Facility. (Exhibits 1,2,3; T Lobo, T [REDACTED])

However, the Appellant states the NAMI monies are being used to pay for the rent at the Appellant's [REDACTED] [REDACTED] [REDACTED] [REDACTED] apartment (currently [REDACTED] [REDACTED])

██████████ in anticipation of the Appellant's relocation to that location. (T ██████████ These are not valid reasons not to pay the NAMI amount owed to the Facility for the daily care of the Appellant.

The Facility has proven its determination to transfer/discharge the Appellant is correct due to 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 and to use the NAMI payments for other purposes. 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 her current location or Appellant's apartment in ██████████ However, no other residential care facility closer to the Appellant's current location or in ██████████ was willing to accept her. (T Giarratano).

CONCLUSION

New Jewish Home-Sarah Neuman has established that its determination to discharge/transfer the Appellant is correct and the proposed discharge/transfer location is appropriate.

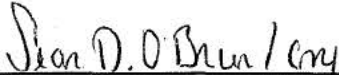
DECISION

The appeal by Appellant is therefore DENIED.

New Jewish Home-Sarah Neuman 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 2, 2021



Sean D. O'Brien
Administrative Law Judge

To:

Cristina Giarratano, LMSW
Director of Social Work
The New Jewish Home-Sarah Neuman
845 Palmer Avenue
Mamaroneck, New York 10543

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