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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

September 14, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Northern Riverview Healthcare Center
87 South Route 9W
Haverstraw, New York 10927

Rivka Milstein
Northern Riverview Healthcare Center
87 South Route 9W
Haverstraw, New York 10927

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,

Sean D. O'Brien
Acting Chief Administrative Law Judge
Bureau of Adjudication

SDO: nm
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

COPY

DECISION

██████████

Appellant,

from a determination by

NORTHERN RIVERVIEW
HEALTH CARE CENTER

to discharge him from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Dates: September 13, 2022

Parties: ██████████
c/o Northern Riverview Health Care Center
87 South Route 9W
Haverstraw, NY 10927
By: pro se

Northern Riverview Health Care Center
87 South Route 9W
Haverstraw, NY 10927
By: Rivka Milstein, Finance Director

JURISDICTION

By notice dated [REDACTED] 2022, Northern Riverview Health Care Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) 415.3(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. A digital recording was made of the proceeding.

HEARING RECORD

- ALJ Exhibits: I – Letter with Notice of Hearing and Transfer/Discharge Notice [REDACTED] 22)
II – Rescheduling Letter [REDACTED]/22)
- Facility Exhibits: 1 – Evidence Packet
2 – Medicaid Budget Letter
- Appellant Exhibits: None
- Facility Witnesses: Rivka Milstein, Finance Director
Vianney Cristopher, Director of Social Work
Dary Medrano, Finance Coordinator
- Appellant Witnesses: Appellant
[REDACTED] Resident

FINDINGS OF FACT

1. The Appellant has been a resident at the Facility since [REDACTED] 2022. (Testimony [T.] Milstein.)
2. The Appellant was receiving Medicare upon admission to the Facility. He applied for Medicaid in [REDACTED] 2022, with the assistance of the Facility, and was approved. (Facility Exhibit [Ex.] 2; T. Milstein.)
3. The Appellant is responsible for paying a net allowable monthly income (NAMI) of \$ [REDACTED] per month from [REDACTED] 2022, to [REDACTED], 2022. (Facility Ex. 2; T. Milstein.)
4. The Appellant was made aware of the amount owed to the Facility per month, and invoices were provided directly to him. (Facility Ex. 1 at pp. 26-39; T. Milstein, Medrano.)
5. As of [REDACTED] 2022, the Appellant owed the Facility NAMI payments totaling \$ [REDACTED] (Facility Ex. 1 at p. 39; T. Milstein.)
6. On [REDACTED] 2022, the Facility issued a Transfer or Discharge Notice to the Appellant which proposed discharge to [REDACTED]
[REDACTED] (ALJ Ex. I.)
7. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant has failed to pay for his stay at the Facility. (ALJ Ex. I.)
8. The Appellant timely appealed the Facility's discharge determination.
9. The Appellant has remained at the Facility during the pendency of the appeal.

ISSUES

Has the Facility established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

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. (PHL § 2801[2][3]; 10 NYCRR 415.2[k].)

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations. (10 NYCRR 415.3[i][1].)

The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(b), which states:

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.

Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate. Under SAPA § 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. It is less than a preponderance of evidence but more than mere surmise, conjecture or speculation, and it constitutes a rational basis for a decision. (Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3d Dept. 1984], appeal dismissed 63 N.Y.2d 649.)

DISCUSSION

Reason for Discharge

The Appellant denies that he submitted an application for Medicaid, and denies that he received the Notice from ██████ County Department of Social Services with its determination of eligibility and specification of his NAMI. His denial of knowledge is credibly contradicted by the testimony of Rivka Milstein, Finance Director, as well as multiple Social Services Progress Note entries in the Appellant's medical record. The Appellant has a clear obligation to pay \$█████ monthly from ██████ through ██████ 2022, as determined by ██████ County. It is undisputed that the Appellant has not paid any portion thereof.

The Appellant testified and articulated many complaints about the Facility in an effort to justify his nonpayment. The reasons include not receiving an itemized bill for the charges, not receiving certain unspecified paperwork from the Facility, being thwarted by a lack of communication from the Facility, a culture of untruthfulness within the Facility, lousy food at the Facility, and sub-optimal care at the Facility. The Appellant called another resident at the Facility as a witness to corroborate his testimony about the care and food at the Facility in an effort to defend his position that he should not have to pay for his stay.

The Appellant's complaints about the Facility are not a valid defense to nonpayment in this proceeding, and this is not the proper forum to address the Appellant's patient care complaints. The Facility has shown that they have provided reasonable and appropriate notice to the Appellant that his NAMI is due and owing and Appellant has failed to pay for his stay. Therefore, discharge is appropriate for nonpayment.

Discharge Location

The Facility has proposed discharge to [REDACTED]

[REDACTED] The proposed discharge location is a skilled nursing facility. It is approximately [REDACTED] miles away from Northern Riverview Health Care Center when traveling by vehicle.¹ The Facility attempted and was unable to locate a closer skilled nursing facility that was willing to accept the Appellant. (Facility Ex. 1 at pp. 1-25.)

The Appellant testified that [REDACTED] is not an appropriate discharge location because he has not received any literature about the facility, his [REDACTED] does not have time to drive the distance to the proposed location for visits due to his work schedule, and that he chose Northern Riverview because of the view of the river from that location. These reasons are insufficient under the totality of circumstances. I find that the discharge location is appropriate for the Appellant.

DECISION

Northern Riverview Health Care Center has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.


1. Northern Riverview Health Care Center is authorized to immediately discharge the Appellant in accordance with its discharge plan.
2. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules.

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<https://www.google.com/maps/dir/Northern+Riverview+Healthcare+Center,+Route+9W,+Haverstraw,+NY/> [REDACTED]

DATED: Albany, New York
September 14, 2022


Tina M. Champion
Administrative Law Judge

TO: 
c/o Northern Riverview Health Care Center
87 South Route 9W
Haverstraw, NY 10927

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