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Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

January 12, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Margaret Tietz Center for Nursing Care
164-11 Chapin Parkway
Jamaica, New York 11432

Jillian Bosinius
Margaret Tietz Center for Nursing Care
164-11 Chapin Parkway
Jamaica, New York 11432

Katie A. Barbieri
Associate Attorney
225 Crossways Park Drive
Woodbury, New York 11797

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 :

Margaret Tietz Center for Nursing Care, :

Respondent, :

to discharge him from a residential health care facility. :

COPY

DECISION

Hearing Before: Ann Gayle
Administrative Law Judge

Held: Via Cisco Webex

Hearing Date: December 20, 2021

Parties: Margaret Tietz Center for Nursing Care
By: Katie A. Barbieri, Esq.

██████████ ██████████
Pro Se

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 Margaret Tietz Center for Nursing Care (“Tietz,” “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 recording of the hearing was made part of the record. Appellant and Alireza Shirvani, M.D., testified for Appellant. Katie A. Barbieri, Esq., cross examined Appellant's witnesses and presented testimony from the following Respondent witnesses: Business Office Manager Leslie Rosier, Assistant Medical Director Stephanie Le, M.D., and Social Worker Christina Catalano. Social Work Regional Director Jillian Bosinius also participated.

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

ALJ

- I: Notice of Hearing with attached Notice of Discharge/Transfer
- II: █ 2021 letter

Facility:

- 1: NAMI budgets from NYCHRA
- 2: Invoices for NAMI charges
- 3: Financial Awareness Form
- 4: Social Work Progress Notes

Appellant:

- A: Appellant's Undated Adjournment Request Letter
- B: █, 2020 DOH Letter
- C: Social Security New Benefit Amount for 2021
- D: Appellant's █ 2020 Letter to Ombudsman

ISSUE

Has Margaret Tietz Center for Nursing Care established that the discharge is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Having reviewed all evidence, citations in parentheses refer to testimony ("T") and exhibits ("Ex") found persuasive in arriving at a particular finding.

1. Respondent, Margaret Tietz Center for Nursing Care, is a residential health care facility located in Jamaica, New York. (Ex I)

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2. Appellant, ██████ ██████ age ██████ was admitted to the Facility on ██████, 2019, for short-term rehabilitation. Appellant's medical conditions are chronic but stable and he continues to require skilled care. (Ex 3; Ex A; T Shirvani)

3. On ██████ 2020, Appellant signed a Financial Awareness Form. This form estimated Appellant's short-term NAMI (Net Available Monthly Income) to be \$ ██████ from ██████ – ██████/20. The form read in part "the Nursing Home does not determine the Resident's NAMI and the NAMI amount listed above is an estimate by the Nursing Home and is subject to change based upon the budget calculations of the applicable Department of Social Services ["DSS"]." (Ex 3; T Rosier)

4. The local Medicaid office, DSS, established Appellant's NAMI to be: \$ ██████ per month effective ██████, 2019; \$ ██████ per month effective ██████ 2020; \$ ██████ per month effective ██████ 2020, then changed back to \$ ██████ per month effective ██████ 2020; \$ ██████ per month effective ██████ 2020; and \$ ██████ per month effective ██████ 2021. No appeals are pending. (Ex 1; Ex 2; T Rosier)

5. Respondent provided Appellant with bills/invoices and explained NAMI to him. Respondent's ██████/21 Invoice (Exhibit 2, page 18) reflects that Appellant was billed consistent with the DSS NAMI budget determinations: \$ ██████ each month from ██████ 2020 through ██████ 2020; \$ ██████ each month from ██████ 2020 through ██████ 2021; and \$ ██████ ██████ 2021 through ██████ 2021. The outstanding balance due the Facility as of ██████/21 was \$ ██████ (Ex 1; Ex 2; T Rosier)

6. By notice dated ██████, 2021 ("discharge notice"), Respondent advised Appellant that it had determined to discharge him on the grounds of failure to pay for his stay at the

¹ Appellant, who for two years had been requesting an explanation of the ██████ 2020 bill, was finally --a few days before the hearing date-- given an adjustment from \$ ██████ to \$ ██████ for ██████ 2020. (T Appellant, Rosier)

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Facility. Appellant currently requires facility care. The discharge location is ██████████
██████████") located in ██████████. ██████████ provides
care and services equivalent to Tietz. (Ex I; Ex 4; T Catalano, Shirvani)

7. 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 Tietz, Facility representatives discussed with and explained to Appellant that he was responsible to pay the monthly NAMI to the Facility, and that Appellant has not made any payments to the Facility. Respondent also proved that discharge/transfer to ██████████ which provides care and services equivalent to Tietz is an appropriate discharge location for Appellant.

Appellant does not want to be transferred to ██████████ and he testified that each time he has contacted ██████████ he was told ██████████ has not agreed to accept him. Respondent reported that ██████████ has agreed to accept Appellant. Appellant wishes to remain at the Facility so that he can continue to have his chronic conditions and ██████████ pain evaluated and addressed. Dr. Shirvani testified that Appellant will be able to have medical evaluations and needed treatment in the community regardless of whether Appellant resides at Tietz or another facility such as ██████████

This hearing was originally scheduled for December 13, 2021. Respondent requested an adjournment to February 2022 in part to seek legal representation (Ex A). An adjournment was granted to December 20, 2021. At the commencement of the hearing, Appellant again requested an adjournment; that request was denied and the hearing proceeded. When Appellant, toward the end of the hearing, reiterated his inability to secure legal representation in time for the hearing,

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the ALJ informed the parties that Appellant could continue to seek legal representation for this matter and that any request made by a legal representative for Appellant until a decision was issued would be considered by the ALJ. The record remained open for that purpose. Neither the parties nor anyone representing Appellant contacted the ALJ/ALJ's office to date.

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 is available, and Appellant has not made payment in his two-year stay at the Facility. Respondent has also proven that ██████ is an appropriate discharge location for Appellant.

DECISION

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

The appeal by Appellant is therefore DENIED.

Respondent, Margaret Tietz Center for Nursing Care, is authorized to discharge Appellant in accordance with the ██████, 2021 Transfer/Discharge Notice.

Respondent shall confirm with ██████ that ██████ has a bed for Appellant and is accepting him to its facility prior to Respondent transferring Appellant to ██████

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
January 12, 2022

Ann Gayle

Ann Gayle
Administrative Law Judge

██████ / Margaret Tietz

TO:

██████ ██████
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Jamaica, New York 11432

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