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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

February 25, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████ c/o Barbara Sylvester, DSW
Archcare at Carmel Richmond Healthcare
& Rehabilitation Center
88 Old Town Road
Staten Island, New York 10304

Barbara Sylvester, DSW
Archcare at Carmel Richmond Healthcare
& Rehabilitation Center
88 Old Town Road
Staten Island, New York 10304

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████████████████████

Michael Fuller, CIDNY Ombudsman
CIDNY
841 Broadway, Suite 301
New York, New York 10003

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

Archcare at Carmel Richmond Healthcare and Rehabilitation Center,
Respondent,

to discharge her from a residential health care facility.

Before: Kimberly A. O'Brien
Administrative Law Judge

Held at: Videoconference via WebEx

Date: February 23, 2022

Parties: ██████████ ██████████
(Appellant's ██████████)

Archcare at Carmel Richmond Healthcare and Rehabilitation Center
88 Old Town Road
Staten Island, New York 10304
By: Barbara Sylvester, DSW

COPY

Decision

JURISDICTION

On [REDACTED], 2022, Archcare at Carmel Richmond Healthcare and Rehabilitation Center (Respondent or facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), issued a discharge notice stating that it determined to discharge [REDACTED] [REDACTED] (Appellant or resident) from the facility and the Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to Title 10 of the 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.

Both the Appellant and [REDACTED] [REDACTED]¹ Appellant's [REDACTED] were served with a notice of hearing. The facility offered one exhibit that includes: Face Sheet; [REDACTED] 2021 Discharge Notice; Invoice; Facility notes dated "[REDACTED]/21 through [REDACTED]/21" showing communications with Appellant and Ms. [REDACTED] about the outstanding balance; and a [REDACTED] 2022 Physician's Letter. The facility witnesses included Mary Beth Francis, Administrator; Jayne Ragab, Financial Screener; and Gina Esposito, Chief Clinical Officer. Ms. [REDACTED] testified on behalf of Appellant, and Michael Fuller, CIDNY Ombudsperson, was present and provided support. A recording of the proceeding was made.

¹ Ms. [REDACTED] made the appeal on behalf of the resident, who agrees with the appeal (Ex. 1 at p. 2-4).

FINDINGS OF FACT

1. The Appellant has been a resident at the facility since [REDACTED] 2021. (Testimony [T.] Ragab, Esposito; Facility Exhibit [Ex.] 1 at pages 1&5)

2. The Appellant began receiving Medicaid coverage in [REDACTED] 2021 and is responsible for paying a net available monthly income (NAMI) to the facility which includes her Social Security. The facility has regularly communicated with the resident and Ms. [REDACTED] about the outstanding NAMI balance. (T. Ragab; Ex. 1 at pages 5&6)

3. The Appellant has not paid her NAMI to the facility and owed approximately \$ [REDACTED] as of [REDACTED] 2022. (T. Ragab; Ex. 1 at page 5)

4. The [REDACTED], 2022 Transfer/Discharge Notice (discharge notice) states that the transfer/discharge is necessary because the Appellant after reasonable and appropriate notice has failed to pay for her stay. (T. Ragab; Ex. 1 at pages 2-6)

5. Dr. Riso found that the Appellant is independent with most of her activities of daily living and can make her own decisions and “as a result of her functional status, she is more suitable for a less restrictive environment such as an Assisted Living Facility.” The facility has proposed to discharge Appellant to [REDACTED] [REDACTED] (Ex. 1 at pages 2-4, 7 – [REDACTED]/2022 Physician’s Letter - Stephen Riso, MD; T. Esposito).

6. The Appellant has remained at the Facility during the pendency of the 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. (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.

ISSUES

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

DISCUSSION

The facility has shown that after providing reasonable and appropriate notice the Appellant has failed to pay for her stay and that the proposed discharge plan is appropriate.²

Ms. Ragab testified that the resident's Medicaid application was approved in or about [REDACTED] 2021 and that the resident's NAMI payment was explained to the resident and Ms. [REDACTED] who has power of attorney (POA). Since on or about [REDACTED] Ms. Ragab and other staff members have been communicating with the resident and Ms. [REDACTED] about the outstanding NAMI balance.

Ms. Esposito testified that the resident is medically stable and that she no longer requires the services the facility provides. Ms. Esposito acknowledged that the resident had an appointment with a [REDACTED] and diagnostic tests scheduled for [REDACTED], 2022, but that whatever the results were the care could be managed in the community. (*See* FOF 5)

Ms. [REDACTED] testified that the resident wants to go to "[REDACTED]," an assisted living facility in [REDACTED]. Ms. [REDACTED] acknowledged that she has been in communication with [REDACTED] since [REDACTED] 2021 and that an admission determination cannot be made until she provides requested documents. Ms. [REDACTED] also

² There was a lengthy pre-hearing discussion. The ALJ made it clear that the facility had met its burden and that she would rule on the record that the resident can be discharged on or after [REDACTED] 2022, pursuant to the [REDACTED] 2022 discharge notice.

testified that her [REDACTED] is not ready to leave the facility yet because of the medical issues she is experiencing, and that there were miscommunications with the facility about the outstanding bill and she is willing to talk with the facility.

CONCLUSIONS

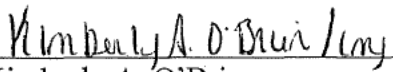
Ms. Ragab and her staff provided reasonable and appropriate notice to Ms. [REDACTED] and the resident that the NAMI was due and owing to the facility. Ms. Esposito's testimony along with Dr. Riso's letter establishes that an assisted living placement is an appropriate placement regardless of the outcome of the resident's consultation with a [REDACTED]

DECISION

Respondent has established that its determination to discharge the Appellant was correct, and that its transfer/discharge location is appropriate.

1. The facility is authorized to discharge the Appellant in accordance with its [REDACTED] [REDACTED] 2022 discharge notice.
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.

DATED: Albany, New York
February 25, 2022



Kimberly A. O'Brien
Administrative Law Judge

To: Barbara Sylvester, DSW
Archcare at Carmel Richmond Healthcare and Rehabilitation Center
88 Old Town Road
Staten Island, New York 10304

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