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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

April 7, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Beth Abraham Center for Rehabilitation
and Nursing
612 Allerton Avenue
Bronx, New York 10467

Erica Schwartz, DSW
Beth Abraham Center for Rehabilitation
and Nursing
612 Allerton Avenue
Bronx, New York 10467

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,

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

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

██████████ ██████████

Appellant,

DECISION

from a determination by

Beth Abraham Nursing and Rehabilitation,

Respondent,

to discharge Appellant from a residential health care facility.

Before: Rayanne L. Babich
Administrative Law Judge (ALJ)

Dates: February 13, 2023
March 1, 2023

Held at: New York State Department of Health
Webex videoconference

Parties: ██████████ ██████████ Appellant
c/o Beth Abraham Nursing and Rehabilitation
612 Allerton Avenue
Bronx, New York 10467
Pro Se

Beth Abraham Nursing and Rehabilitation
612 Allerton Avenue
Bronx, New York 10467

By: Erica Schwartz, Director of Social Work

JURISDICTION

By notice dated ██████████, 2022, Beth Abraham Nursing and Rehabilitation, a residential health care facility (Facility), determined to discharge ██████████ ██████████ (Appellant), from care in its Facility. The Appellant appealed the proposed discharge.

RECORD

ALJ Exhibits [Ex]: I – Notice of Hearing, January 31, 2023
II – Facility Admission Record

Facility Exhibits: 2 – Notice of Discharge (English and [REDACTED], 2022
3 – Medicaid budget, [REDACTED], 2022
4 – Facility statement of charges, [REDACTED], 2023
5 – Medicare Notice of Non-Coverage (English and [REDACTED], 2022
6 – Social work progress notes, [REDACTED] 2022 through [REDACTED], 2023

Appellant Exhibits: A – Facility statement of charges, [REDACTED], 2022
B – Facility statement of charges, [REDACTED], 2023
C – Handwritten notes, Health First, Senior Health Partners paid dates

Facility Witnesses: Erica Schwartz, Director of Social Work
Karen Fernandez, Finance Coordinator
Lora Hong, Nurse Practitioner
Debby Willis, Nurse Manager
Jose Santos, Social Worker
Surinder Pal, Attending Physician

Appellant Witness: [REDACTED]

A stenographic transcript [T.] of the hearing was made. [T. 1 – 147.]

SUMMARY OF FACTS

1. The Appellant was admitted to the Facility on [REDACTED] 2022 for short-term rehabilitation services following a hospitalization. The Appellant receives physical and occupational therapy. He requires daily assistance with bathing, dressing, and transferring. The Appellant uses a manual wheelchair for ambulation and requires occasional assistance from nursing staff to push the wheelchair. His primary language is [REDACTED] [Ex II; T. 35-37.]
2. On or about [REDACTED] 2022, the Facility advised the Appellant that his Medicare coverage would end on [REDACTED] 2022. The Appellant was advised of the option to convert his

Medicaid benefits for long-term care if he planned to remain in the Facility. [Ex 6; T. 42, 46.]

3. On or about [REDACTED] 2022, the Facility submitted a supplemental Medicaid application on behalf of the Appellant to convert his community Medicaid benefits to cover the cost of his care at the Facility. [Ex 3; T. 52-53.]
4. On [REDACTED] 2022, the Facility provided an invoice to the Appellant showing a balance due of \$ [REDACTED] [Ex A.]
5. On [REDACTED] 2022, Medicaid issued a chronic care budget letter to the Facility that showed the Appellant's Net Available Monthly Income (NAMI) was \$ [REDACTED] beginning [REDACTED] 2022. The budget letter was provided to the Appellant prior to the hearing. [Ex 3; T. 55.]
6. By notice dated [REDACTED], 2022, the Facility advised the Appellant of its determination to discharge the Appellant because he has "failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility."
7. The Facility has proposed to transfer the Appellant to [REDACTED] New York, a nursing home that provides the same services as the Facility. [Ex 2; T. 38.]
8. The Facility's physician and nurse practitioner have determined the Appellant is medically stable for discharge to another nursing home. [Ex 2; T. 31, 115.]

ISSUES

Has the Facility met its burden of proving that the discharge is necessary and that the discharge plan is appropriate?

APPLICABLE LAW

1. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(i), which provides, in pertinent part:
 - (1) With regard to the transfer or discharge of residents, the facility shall:
 - (i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility.
 - (b) 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. 10 NYCRR 415.3(i)(1)(i)(b).
2. The Facility has the burden of proving that the "discharge or transfer is/was necessary and the discharge plan appropriate." 10 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

The Facility has met its burden to prove that the discharge is necessary, and the discharge plan is appropriate.

Grounds for Discharge

The Appellant's Medicare benefit covered the cost of his stay through [REDACTED] 2022. [Ex 5; T. 46.] Once it became apparent the Appellant required long-term care, the Facility and the Appellant agreed to seek Medicaid benefits to cover the cost of his nursing home care because his

Medicare benefits had been exhausted. [T. 47.] Karen Fernandez, Finance Coordinator for the Facility, testified that she submitted a Medicaid application on the Appellant's behalf on or about [REDACTED] 2022, but that Medicaid did not provide the chronic care budget determination for the Appellant's NAMI until [REDACTED], 2022. [Ex 3; T. 53.] However, Ms. Fernandez and Jose Santos, Social Worker at the Facility, discussed with the Appellant that he will be responsible for a NAMI payment. [T. 47-48, 105.] An invoice showing a statement of charges and estimated NAMI payment was provided to the Appellant on [REDACTED], 2022. [Ex A; T. 54.]

The Appellant may be discharged from the Facility if, after receiving reasonable and appropriate notice, he has failed to pay for his stay: 10 NYCRR 415.3(i)(1)(i)(b). As of the date of hearing, the Appellant's outstanding balance for NAMI payments is \$ [REDACTED] [T. 48.] Through discussions with Ms. Fernandez and Mr. Santos, the Appellant was advised that he would be responsible for the payment required according to the Medicaid determination. [T. 48, 5560-62, 107.] Despite receipt of the statement of charges and budget letter, the Appellant has failed to make any payments toward his balance due even as late as the second day of hearing. [T. 60.]

The Appellant argued that his health insurance benefits should pay the entire cost of his care. He testified that he contacted an insurance representative who advised that payments have been made to the Facility, but this does not consider the Medicaid determination. [T. 70.] The budget letter issued by Medicaid is the final determination on the NAMI payment owed and is separate and distinct from health insurance payments. Therefore, the Appellant remains responsible for the amount owed. The Facility has established that its determination to discharge the Appellant is necessary.

Proposed Discharge Location

The proposed discharge location is [REDACTED], a nursing home located in [REDACTED] New York. [Ex 2.] The Appellant objected to the discharge location because he has on-going medical appointments in the community as well as physical and occupational therapies.

Mr. Santos has been working with the Appellant during his admission and conducted discharge planning. He testified that he sent approximately ten referrals to local nursing homes but none had a long-term care bed available. [T. 111.] The discharge location offers the same services the Appellant is currently receiving at the Facility. Surinder Pal, M.D., attending physician at the Facility, testified that the Appellant is medically cleared for discharge to another nursing home and will be able to access community health services as needed and resume his current therapies upon arrival at the discharge location. [T. 115, 119.] The proposed discharge location is appropriate as it will meet and address his medical needs. 10 NYCRR 415.3(i)(2)(iii)(b).

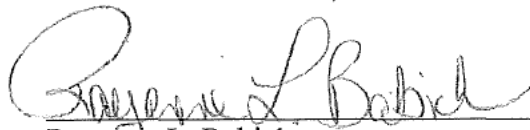
ORDER

Beth Abraham Nursing and Rehabilitation has met its burden to prove that its determination to discharge the Appellant is necessary, and that transfer to [REDACTED] is appropriate.

1. The Facility is authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED] 2022.

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: April 6, 2023
Albany, New York

A handwritten signature in cursive script, reading "Rayanne L. Babich", written over a horizontal line.

Rayanne L. Babich
Administrative Law Judge

TO:

Erica Schwartz, Director of Social Work
Beth Abraham Nursing and Rehabilitation
612 Allerton Avenue
Bronx, New York 10467

██████████ ██████████ Appellant
Beth Abraham Nursing and Rehabilitation
612 Allerton Avenue
Bronx, New York 10467