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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 21, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Rochester Center for Rehabilitation
and Healthcare
525 Beahan Road
Rochester, New York 14624

Eli Vatch, LNHA
Rochester for Rehabilitation
and Healthcare
525 Beahan Road
Rochester, New York

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

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

██████████ ██████████

Appellant,

from a determination by

ROCHESTER CENTER FOR
REHABILITATION AND NURSING

Respondent,

to discharge her from a residential health
care facility.

COPY

DECISION

Hearing Before: Matthew C. Hall
Administrative Law Judge

Held via WEB EX

Hearing Dates: February 22, 2023

Parties: Rochester Center for
Rehabilitation and Nursing
525 Beahan Road
Rochester, New York 14624
By: Eli Vatch

██████████ ██████████

By: Patrick Sloane, Ombudsman
Diana Leach, Ombudsman

JURISDICTION

By notice dated [REDACTED] 2022, Rochester Center for Rehabilitation and Nursing (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [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 - Financial Statement
2 - BIMS score
3 - Facility Admit Notes

Facility Witnesses: Eli Vatch, Nursing Home Administrator
Whitney Herring, Director of Social Work
Cheryl Rowe, Nursing Supervisor
Tracy Sugar, Business Office Director

Appellant's Witnesses: [REDACTED] Resident
Patrick Sloane, Ombudsman
Diana Leach, Ombudsman

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 his 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 was admitted to the Facility as a [REDACTED] with diagnoses including [REDACTED] and [REDACTED]. [REDACTED] He is alert and oriented with a BIMS score of [REDACTED]/15. The Appellant was admitted to the Facility on [REDACTED], 2021, for long term care. (ALJ I, Ex. 1,3.)

2. During the period at issue, the Appellant's Net Available Monthly Income (NAMI) amount was set at [REDACTED] [REDACTED] per month. (Ex. 1; T. Sugar.)

3. The Appellant has failed to pay the full NAMI monthly amount to the Facility from [REDACTED] 2022 through [REDACTED] 2023

and \$ [REDACTED] was owed the Facility to that point. (Ex. 1; T. Sugar.)

4. The Facility notified the Appellant on several occasions by written notifications and through verbal communications of the amount owed. When approached by the Facility's Business Office Director, the Appellant would not agree to pay. (Ex. 1; T. Sugar, Vatch.)

5. As of the date of this hearing, the Appellant has made no payments on his outstanding balance. (Ex. 1; T. Sugar.)

6. By notice dated [REDACTED] 2022, the Facility advised the Appellant that it had determined to discharge the Appellant on the grounds of failure to pay the Facility after being given reasonable notice. (ALJ. I.)

7. The Appellant still requires residential care, and the proposed discharge location is to the [REDACTED] [REDACTED], New York [REDACTED] (ALJ. I.)

8. The Facility has worked with the Appellant to allow him to pay what he owes through a payment plan. The Appellant, however, has been uncooperative and unreliable in this regard. (T. Sugar, Vatch.)

9. Appellant remains at the Facility pending the outcome of this 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. 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], 2021, with diagnoses including in [REDACTED] and [REDACTED]. He is a [REDACTED] and is essentially bound to his bed. (ALJ I., T. Vatch, Herring, Sloane.)

The Rochester County Department of Social Services (DSS) determined the Appellant is responsible for paying the Facility \$ [REDACTED] per month for his care. (Ex. 1.) Due to the Appellant's failure to pay his NAMI over the past several months, the Appellant

is in arrears to the Facility in the amount of \$ [REDACTED] through [REDACTED] of 2023. (Ex. 1; T. Sugar.)

The Appellant does not deny that he is required to pay the NAMI to the Facility to cover the costs of his care, but has refused to pay the NAMI because he has other debts that must be paid instead, including the mortgage on a home that he currently owns in the community. (T. Sugar, Vatch.)

When asked if he could at least make partial payments to the Facility until he was in a better position to pay the full amount, the Appellant indicated that he had offered to make partial payments but was told that this was not acceptable. This assertion was adamantly denied by the Facility. Business Office Director Tracy Sugar stated, "The Facility would never refuse a partial payment." The Appellant's excuse that he has a mortgage to cover in the community is not a valid reason to shirk his financial obligations to the Facility. (ALJ I; T. Sugar, [REDACTED])

The Facility has proven its determination to transfer/discharge the Appellant is correct due 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 his stay and care at the Facility. 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 skilled nursing facility, and the proposed discharge location is such a place. The Facility attempted to find a closer facility to Appellant's current location. However, in that the Appellant refuses to pay his required NAMI, no other residential care facility closer to the Appellant's current location has agreed to accept him as a new resident. (T. Sugar, Vatch.)

The Appellant testified, that with the help of Ombudsman Patrick Sloane and Diana Leach, he is attempting to receive home health care through the Consumer Directed Personal Assistance (CDPAP) program. This would allow him to move back into his own residence and receive health care at home. The Appellant is encouraged to continue to pursue such services and may continue this quest prior to, or after his relocation to the [REDACTED]

CONCLUSION

Rochester Center for Rehabilitation and Nursing 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.

Rochester Center for Rehabilitation and Nursing is authorized to discharge the Appellant in accordance with the [REDACTED] 2022, 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
April 21, 2021

Matthew C. Hall/cj
Matthew C. Hall
Administrative Law Judge

To: Eli Vatch, Nursing Home Administrator
Rochester Center for Rehabilitation and Nursing
525 Beahan Road
Rochester, New York 14624

[REDACTED]
c/o Rochester Center for Rehabilitation and Nursing
525 Beahan Road
Rochester, New York 14624