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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 27, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Surge Rehabilitation and Nursing LLC
49 Oakcrest Avenue
Middle Island, New York 11953

Tanya Randolph, Facility Administrator
Surge Rehabilitation and Nursing LLC
49 Oakcrest Avenue
Middle Island, New York 11953

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: nm
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

Surge Rehabilitation and Nursing LLC,

Respondent,

to discharge Appellant from a residential health care facility.

COPY

DECISION

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

Dates: April 18, 2023
April 24, 2023

Held at: New York State Department of Health
Webex videoconference

Parties: ██████████ ██████████ ██████████
c/o Surge Rehabilitation and Nursing LLC
49 Oakcrest Avenue
Middle Island, New York 11953
By: Pro se

Surge Rehabilitation and Nursing LLC
49 Oakcrest Avenue
Middle Island, New York 11953
By: Tanya Randolph, Facility Administrator

JURISDICTION

By notice dated ██████████ 2023, Surge Rehabilitation and Nursing LLC, 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, [REDACTED] 2023

Facility Exhibits: 1 – Notice of Discharge, [REDACTED] 2023
2 – Resident Face Sheet
3 – Physician Progress Note, [REDACTED] 2023
4 – Resident Interview, [REDACTED] 2022
5 – Statement of Charges, [REDACTED] 2023
6 – Medicaid Notice of Intent to Establish Liability, [REDACTED] 2022
7 – Medicaid Community Budget determination, [REDACTED] 2022
8 – Suffolk County Department of Social Services, Snapshot Worksheet, [REDACTED] 2022

Appellant Exhibits: A – Landlord/Tenant Letter, [REDACTED] 2023

Facility Witnesses: Kim Butler, Director of Social Work
Karen Munoz, Long Term Care Social Worker

Appellant Witness: [REDACTED] Appellant's [REDACTED]

The hearing was digitally recorded. Testimony from April 18, 2023 is cited as "R1" and from April 24, 2023 is cited as "R2."

SUMMARY OF FACTS

1. The Appellant was admitted to the Facility on [REDACTED], 2022 for rehabilitation and wound care following surgery on her [REDACTED]. [Ex 2, 3.]
2. The Appellant receives daily wound care for a [REDACTED] wound on her [REDACTED]. She ambulates using a self-propelled manual wheelchair on her physician's orders that she remain non-weight bearing. She can perform her own activities of daily living and can transfer independently to and from her wheelchair. [Ex 2, 3; R1 41:31.]
3. The cost of her stay at the Facility was covered by Medicare from admission through [REDACTED] 2022. The Appellant is responsible for a copay to the nursing home as part of her Medicare coverage. [Ex 6; R1 26:05, 32:02.]

4. On [REDACTED] 2022, the Facility applied for Medicaid on the Appellant's behalf to cover the costs of her care once Medicare ended and to reduce the amount owed to the Facility for Medicare copays. [R1 30:46.]
5. On [REDACTED] 2022, the Appellant was approved for Medicaid, effective [REDACTED] 2022 and the Suffolk County Department of Social Services (DSS) issued two budget letters. The first letter showed the Appellant's Net Available Monthly Income (NAMI) from [REDACTED], 2022 through [REDACTED], 2022 as \$ [REDACTED] per month. The second letter showed the Appellant's NAMI as \$ [REDACTED] per month, effective [REDACTED] 2022. Copies of the budget letters were sent to the Appellant. [Ex 6; R1 32:02; 34:08.]
6. The Appellant has not paid any amount toward the NAMI charges. The outstanding balance through [REDACTED], 2023 is \$ [REDACTED] [Ex 5.]
7. By notice dated [REDACTED] 2023, the Facility advised the Appellant of its determination to discharge the Appellant because she has "failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility." [Ex 1.]
8. The Facility has proposed to discharge the Appellant to her apartment in [REDACTED], New York, with a referral for in-home wound care and nursing services. [Ex 1; R1 42:23.]
9. The Facility's physician has documented in the medical record that the Appellant is medically stable for discharge, and she can manage her wound care needs at home. [Ex 3.]

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 proven that the discharge is necessary, and the discharge plan is appropriate.

The cost of the Appellant's stay at the Facility has been covered by Medicare and Medicaid, but the Appellant remains responsible for NAMI payments due to the Facility as determined by the budget letter from DSS. [Ex 6, 7; R1. 26:05, 32:02.] Karen Munoz, Long Term Care Social Worker for the Facility, testified that the Facility assisted the Appellant with applying for Medicaid on [REDACTED], 2022. [R1 30:46.] The Medicaid budget letters showing the NAMI charges were issued on [REDACTED] 2022 and mailed to the Appellant. [Ex 6, 7; R1 32:21.] The Facility also provided monthly invoices to the Appellant showing a statement of the charges and the total amount due. [R1 34:08, 37:56.] As of [REDACTED] 2023, the Appellant's outstanding balance for NAMI payments is \$ [REDACTED] and has made no payments toward this balance. [Ex 5.]

The Appellant's [REDACTED] testified that the Appellant is unable to pay the NAMI charges because she has a limited income and expenses to maintain her apartment in the community. [Ex A; R2 2:36.] Although she plans to return to her home in the future, the Appellant remains responsible for the amount owed to the Facility and has made no effort to pay any of the charges. The Facility has established that its determination to discharge the Appellant is necessary because she has failed to pay for her stay. 10 NYCRR 415.3(i)(1)(i)(b).

The proposed discharge location is the Appellant's home in [REDACTED] New York where she resided prior to her admission. [Ex 2; R1 27:48.] The Appellant objected to the discharge location because she would prefer to remain at the Facility for another month while her wound is healing.

Director of Social Work, Kim Butler, has been working with the Appellant to develop a plan for discharge where the Appellant would return to her home. [R1 40:56.] Ms. Butler testified that the Appellant is independent in her activities of daily living but due to the wound on her [REDACTED] she is non-weight bearing and uses a wheelchair that she can push herself. [R1 41:50.] Upon discharge, the Facility will order a new manual wheelchair that will fit through the doorways of her apartment. [R1 41:57.] The Facility will also make a referral to a Certified Home Health Agency (CHHA) for nursing services to provide daily wound care and teach the Appellant how to care for the wound herself. [R1 42:23.]


Mr. [REDACTED] testified that the Appellant has a pending surgery for her [REDACTED] that requires continued care in a nursing home while she recovers. [R2 8:07.] He also stated that the Appellant has two upcoming appointments with community physicians and plans to seek their recommendation on whether she should remain in a nursing home. [R2 8:34.] However, Facility physician, Mohitmeet Singh, M.D., documented in the Appellant's medical record that she can manage her own wound care and personal needs at home. [Ex 3.] The Appellant failed to provide proof that she continues to require nursing home care. While the Appellant may require services some time in the future, her current needs and care can be properly managed at home with CHHA services in place. The proposed discharge location is appropriate as it will meet and address her medical needs. 10 NYCRR 415.3(i)(2)(iii)(b).

ORDER

Surge Rehabilitation and Nursing LLC has met its burden to prove that its determination to discharge the Appellant is necessary, and that discharge to her residence in [REDACTED], New York, is appropriate.

1. The Facility is authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED], 2023.
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 27, 2023
Albany, New York


Rayanne L. Babich
Administrative Law Judge

TO:

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c/o Surge Rehabilitation and Nursing LLC
49 Oakcrest Avenue
Middle Island, New York 11953

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