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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

May 19, 2023

## CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
c/o The Phoenix Rehabilitation and  
Nursing Center  
140 St. Edwards Street  
Brooklyn, New York 11201

Tatyana Polyak, DSW  
The Phoenix Rehabilitation and  
Nursing Center  
140 St. Edwards Street  
Brooklyn, New York 11201

David Roll, NHA  
The Phoenix Rehabilitation and  
Nursing Center  
140 St. Edwards Street  
Brooklyn, New York 11201

**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

**The Phoenix Rehabilitation and Nursing Center,**

Respondent,

to transfer Appellant from a residential health care facility.

**DECISION**

COPY

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

Dates: April 20, 2023  
May 11, 2023

Held at: New York State Department of Health  
Webex videoconference

Parties: ██████████ Appellant  
c/o The Phoenix Rehabilitation and Nursing Center  
140 St. Edwards Street  
Brooklyn, New York 11201  
Pro Se

The Phoenix Rehabilitation and Nursing Center  
140 St. Edwards Street  
Brooklyn, New York 11201  
By: Tatyana Polyak, Director of Social Work

**JURISDICTION**

By notice dated March 20, 2023, The Phoenix Rehabilitation and Nursing Center, a residential health care facility (Facility), determined to transfer ██████████ (Appellant), from care in its Facility. The Appellant appealed the proposed transfer.

RECORD

ALJ Exhibits [Ex]: I – Notice of Hearing, [REDACTED], 2023  
II – Notice of Discharge, [REDACTED], 2023  
III – Admission Record

Facility Exhibits: 1 – Social Services Progress Notes: [REDACTED], [REDACTED], [REDACTED]  
and [REDACTED], 2022; and [REDACTED] 2023  
2 – NYC Department of Social Services, Human Resources Administration  
Budget Explanation, [REDACTED] 2022, and [REDACTED] 2023  
3 – NYC Department of Homeless Services Referral Form, [REDACTED], 2023  
4 – Statement of Charges: [REDACTED], 2022; [REDACTED] and [REDACTED] 2023  
5 – Medicaid Coordinator, Business Notes: [REDACTED]  
[REDACTED], 2022; [REDACTED] and [REDACTED] 2023

Appellant Exhibits: A – Statement of Charges: [REDACTED] and [REDACTED], 2023  
B – Medicare appeal determination letter, [REDACTED], 2022  
C – NYC Department of Homeless Services Referral Form, edited, [REDACTED]  
[REDACTED], 2023  
D – Statement of Charges, [REDACTED], 2022  
E – Statement of Charges, [REDACTED] 2023

Facility Witnesses: Tatyana Polyak, Director of Social Work  
Anna Plotkina, Medicaid Coordinator  
David Roll, Facility Administrator

Appellant Witness: [REDACTED] [REDACTED]

The hearing was digitally recorded. Citations from April 20, 2023 are cited as “R1” and from May 11, 2023 are cited as “R2.”

SUMMARY OF FACTS

1. The Appellant was admitted to the Facility on [REDACTED] 2022 for short-term rehabilitation services following a hospitalization. The Appellant received physical and occupational therapy and uses a wheelchair for ambulation. [Ex III; R2 1:10:24.]
2. Upon admission, the Appellant had Medicare benefits only. Anna Plotkina, Medicaid Coordinator for the Facility, advised the Appellant of the option to apply for Medicaid to

- pay for the cost of her stay once Medicare benefits ended. The Appellant refused to apply for Medicaid. [Ex 1; R2 1:57:12.]
3. On or about [REDACTED] 2022, the Facility submitted a Medicaid application without the Appellant's participation to recover the cost of her stay. [Ex 5; R2 1:59:03.]
  4. On [REDACTED] 2022, the New York City Department of Social Services (DSS) approved the Medicaid application and issued to the Facility a budget letter showing its determination of the Appellant's Net Available Monthly Income (NAMI) payment of [REDACTED] due to the Facility each month, effective [REDACTED] 2022. [Ex 2; R2 2:05:25.]
  5. On [REDACTED] 2022, the Facility provided a copy of the budget letter to the Appellant. [Ex 5; R2 2:00:59.]
  6. On [REDACTED] 2022, the Facility provided an invoice to the Appellant for NAMI charges due. [Ex 2, 5; R 2:00:31.]
  7. On [REDACTED] 2023, DSS issued a second budget letter to the Facility showing the Appellant's NAMI remained at \$ [REDACTED] effective [REDACTED] 2023. The Facility provided a copy of the second budget letter to the Appellant. [Ex 2, 5; R2 2:09:57.]
  8. On [REDACTED], 2022, [REDACTED], and [REDACTED], 2023, the Facility issued updated invoices to the Appellant for NAMI charges due per the Appellant's request. [Ex 2, 5; R2 .]
  9. The Appellant has refused to pay any portion of the NAMI payment. The total balance due as of [REDACTED], 2023 is \$ [REDACTED] [Ex 4, E; R2 2:12:43.]
  10. By notice dated [REDACTED] 2023, the Facility advised the Appellant of its determination to transfer the Appellant on [REDACTED], 2023 due to her "failure to pay and charges are not in dispute, and Medicaid is not pending." [Ex II.]

11. The Facility has proposed to transfer the Appellant to [REDACTED] Nursing Home, a nursing home in [REDACTED] New York. [Ex II; R2 1:21:52.]
12. Tatyana Polyak, Director of Social Work at the Facility, has documented in the Appellant's medical record that the Appellant has refused to pay any portion of the NAMI charges. [Ex 1.]

### ISSUES

Has the Facility met its burden of proving that the transfer is necessary and that the plan to transfer the Appellant to another nursing home 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. Before the transfer or discharge of a resident, the Facility shall record the reasons in the resident's clinical record. 10 NYCRR 415.3(i)(1)(iii)(b).
3. 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 is seeking to transfer the Appellant because she has refused to pay the NAMI due to the Facility each month beginning [REDACTED] 2022. The Appellant objects to the transfer because she has not received an itemized bill that explains what she is expected to pay.

Upon admission, the Appellant was advised that once her Medicare benefits were exhausted, she could apply for Medicaid to cover the cost of the remainder of her stay, and that she may be required to pay a NAMI to the Facility. [R2 1:57:12.] The Appellant refused to apply for Medicaid or work with the Facility to find another source of payment. [R2 1:57:58, 1:58:30.]

As Medicaid Coordinator for the Facility, Anna Plotkina submitted a Medicaid application to recover the cost of the Appellant's stay because the Appellant refused to participate in the application process. [R2 1:58:20.] Ms. Plotkina testified that temporary Medicaid rules in place on September 15, 2022 permitted her to submit the application without information from the Appellant, and once submitted, DSS completed the process to verify the resident's information and income. [R2 1:59:03.] The Medicaid application was approved, and Ms. Plotkina provided the budget letter to the Appellant along with invoices from the Facility on the balance due. [Ex 5; R2 2:00:31.]

The Appellant claims she is unaware of the exact charges because she has not received an itemized bill. The evidence does not support this claim because Ms. Plotkina and Tatyana Polyak,

Director of Social Work, met with the Appellant on several occasions to discuss her Medicaid benefits and NAMI charges due. [Ex 1, 5; R2 2:00:50.] Ms. Plotkina also testified that upon the Appellant's request, she provided several copies of invoices showing the NAMI charges. [Ex 4, E; R2 2:02:29.] Although the Appellant testified she is willing to pay the NAMI once she receives an itemized bill, the outstanding balance for NAMI payments is \$ [REDACTED] and the Appellant has paid nothing toward this amount due despite receiving the budget letters and several invoices from the Facility. [Ex 4, E; R2 2:12:43.] The Facility has met its burden to prove that the transfer is necessary because the Appellant has refused to pay the NAMI owed. 10 NYCRR 415.3(i)(1)(i)(b).

The proposed transfer location is [REDACTED] Nursing Home, a nursing home located in [REDACTED] New York. [Ex II.] The Appellant objects to the transfer because she does not wish to acquire further NAMI charges.

Ms. Polyak testified that the [REDACTED] Nursing Home is a nursing home similar to the Facility and will provide the same services to the Appellant including physical and occupational therapy. [R2 1:21:52.] She also stated that [REDACTED] Nursing Home is aware the Appellant has not paid her NAMI charges but remains willing to accept the Appellant. [R2 1:40:26.] In addition to locating an appropriate nursing home for the Appellant, Ms. Polyak testified that a referral to a [REDACTED] shelter was previously submitted upon the Appellant's request, but at the time of the hearing on May 11, 2023, the Appellant declined a discharge to the shelter. [Ex 3; R2 1:23:55.] The proposed transfer location is appropriate as it will meet the Appellant's medical needs. 10 NYCRR 415.3(i)(2)(iii)(b).

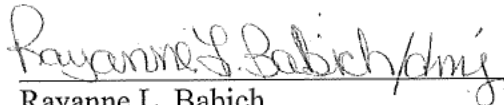


ORDER

The Phoenix Rehabilitation and Nursing Center has met its burden to prove that its determination to transfer the Appellant is necessary, and that transfer to Resort Nursing Home is appropriate.

1. The Facility is authorized to transfer 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: May 19, 2023  
Albany, New York



Rayanne L. Babich  
Administrative Law Judge

TO:

██████████ Appellant  
c/o The Phoenix Rehabilitation and Nursing Center  
140 St. Edwards Street  
Brooklyn, New York 11201

Tatyana Polyak, Director of Social Work  
The Phoenix Rehabilitation and Nursing Center  
140 St. Edwards Street  
Brooklyn, New York 11201

David Roll, Administrator  
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