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# Department of Health

**KATHY HOCHUL**  
Governor

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

**JOHANNE E. MORNE, M.S.**  
Acting Executive Deputy Commissioner

November 14, 2023

## CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
c/o The Grand Rehabilitation and Nursing  
at Utica  
1657 Sunset Avenue  
Utica, New York 13502

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Abrams Fensterman, LLP  
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The Grand Rehabilitation and Nursing  
at Utica  
1657 Sunset Avenue  
Utica, New York 13502

██████████ ██████████  
██████████ ██████████  
██████████ ██████████

**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 / ny*

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 Grand Rehabilitation and Nursing at Utica  
Respondent,**

**to discharge him from a residential health care facility.**

**COPY**

**DECISION**

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Hearing Before: Jean T. Carney  
Administrative Law Judge

Held via: Cisco WebEx videoconference

Hearing Date: November 1, 2023

Parties: The Grand Rehabilitation and Nursing at Utica, Respondent  
By: Michael G. Bass, Esq. and Barbara Stegun Phair, Esq.  
Abrams Fensterman LLP  
mgbass@abramslaw.com; bphair@abramslaw.com

██████████ ██████████ Appellant, *pro se*

### JURISDICTION

By notice dated [REDACTED] 2023, The Grand Rehabilitation and Nursing at Utica (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] [REDACTED] (Appellant) from the Facility and place him in another residential care facility. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i).

### HEARING RECORD

In support of its determination, the facility presented documents (Exhibits 1-4); the testimony of Zachary Jensen, Administrator; Lisa Curry, Finance Coordinator; Michele VanDenwalker, Social Services Director; and Ramon Colon, Assistant Director of Nursing (ADON). The Appellant testified in his own behalf and presented no documentary evidence. Also present were the Appellant's [REDACTED] [REDACTED] [REDACTED] and his [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. The Notice of Hearing with discharge notice, and the resident face sheet were admitted as ALJ I, and II respectively. The hearing was digitally recorded and made part of the record.

### ISSUES

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

### FINDINGS OF FACT

Citations in parentheses refer to testimony (T) and exhibits (Exh) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was rejected in favor of cited evidence. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility for long term care on [REDACTED] 2022 from [REDACTED] Hospital. (ALJ II; T Ms. Curry).

2. The Appellant applied for Medicaid and was approved retroactively to [REDACTED] 2022. The Medicaid program calculated the Appellant's monthly contribution, also known as the Net Available Monthly Income (NAMI), at \$ [REDACTED] until [REDACTED] [REDACTED] 2023. Residents are required to pay the NAMI to the facility, and often designate the facility as their representative payee to ensure timely payments. (Exh 2; T Mr. Curry and Ms. Curry).

3. The Facility made numerous attempts to discuss the Appellant's financial obligations with him, and delivered invoices to him each month detailing the amounts owed. The Facility referred the Appellant's debt for collection in [REDACTED] 2023; but the Appellant has consistently refused to pay his outstanding debt. (Exhs 1 and 3; T Mr. Jensen, Ms. Curry, and Ms. VanDenwalker).

4. The Facility has attempted to work with the Appellant and his family to develop a discharge plan. The Facility made referrals to several nursing homes in the same geographic area; and explored Assisted Living Facilities (ALFs); but there were no beds available. (T Ms. VanDenwalker).

6. The Appellant has been accepted at [REDACTED] skilled nursing facility in [REDACTED] New York. [REDACTED] provides the same services as this Facility, and is a safe and appropriate location for the Appellant to be discharged to. (ALJ I; T Mr. Colon).

#### APPLICABLE LAW

A residential health care facility, also referred to 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 §§ 2801[2] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(4)(b), a resident may be discharged when the resident has failed to pay for a stay at the facility after being given reasonable and appropriate notice. If a resident becomes eligible for Medicaid, the facility may only charge the amount allowed by Medicaid. (10 NYCRR § 415.3[i][4][b]).

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). 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 [3<sup>rd</sup> Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

### DISCUSSION

The Facility has presented sufficient evidence to show that the Appellant's discharge is necessary, and the discharge plan is appropriate.

The evidence shows that the Facility provided the Appellant with sufficient notice of his obligation to pay, and the consequences of his failure to pay. The Appellant did not deny the amount owed to the Facility. He testified that he would like to make a payment arrangement, and would be willing to give the Facility two-thirds of his monthly obligation; but offered no plan for paying the past due amount. (T Mr. [REDACTED])

In determining an appropriate discharge location, the Facility should make reasonable efforts to find a place within the resident's geographic area. The resident should be included in discharge planning, and his input taken into consideration. (10


NYCRR 415.11[d][3]). Here, the Appellant opposes the transfer, as being too far from his family. The Facility has made reasonable efforts to find a suitable discharge location within the Appellant's geographic area before resorting to appropriate facilities further away.

The Facility has established that its determination to discharge the Appellant was correct, and that the discharge location is appropriate.

### DECISION

1. The Facility has shown that the Appellant's discharge is necessary.
2. The Facility may discharge the Appellant pursuant to the discharge notice dated [REDACTED], 2023.
3. This Decision may be appealed to a court in the appropriate jurisdiction.
4. This Decision shall become effective upon service to the parties.

**DATED: November 14, 2023**  
**Albany, New York**


  
**JEAN T. CARNEY**  
**Administrative Law Judge**



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