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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 10, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Luxor Nursing & Rehabilitation
at Mills Pond Center
273 Moriches Road
St. James, New York 11780

Cassandra Butterworth
Luxor Nursing & Rehabilitation
at Mills Pond Center
273 Moriches Road
St. James, New York 11780

Erik McKenna, Esq
PO Box 1449
Mattituck, New York 11952

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

**Luxor Nursing and Rehabilitation
at Mills Pond Center,**

Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

Docket # 6281

Hearing before: Kathleen Dix
Administrative Law Judge
November 6, 2023
By WebEx Videoconference

Parties: Luxor Nursing and Rehabilitation
at Mills Pond Center
273 Moriches Road
St. James, NY 11780-2117
By: Cassandra Butterworth, Finance Dept.

██████████ ██████████
c/o Luxor Nursing and Rehabilitation
at Mills Pond Center
273 Moriches Road
St. James, NY 11780-2117
By: Erik McKenna, Esq.

JURISDICTION

By notice dated [REDACTED] 2023, Luxor Nursing and Rehabilitation at Mills Pond Center, (Facility), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge [REDACTED] [REDACTED] (Appellant) from care and treatment in its Facility to [REDACTED], [REDACTED]

A hearing was held on November 6, 2023, in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); and the New York State Administrative Procedure Act (SAPA), via Webex videoconference. Evidence was received and witnesses were examined. A digital recording of the hearing was made. (43.30 m.)

HEARING RECORD

ALJ Exhibits:

- I. Notice of Hearing and Notice of Discharge/Transfer – 5 pages
- II. Admission Record - 2 pages

Facility's Exhibits:

1. Patient Review Instrument – 8 pages
2. Denial Letters – 7 pages
3. [REDACTED] Acceptance Letter – 1 page
4. Financial Coordinator notes 2023 – 2 pages
5. [REDACTED] 2023, patient invoice – 2 pages
7. Medicaid Application Response – 35 pages
8. Admissions Agreement – 44 pages

Appellant's Exhibits:

1. None.

Facility's Witnesses:

1. Cassandra Butterworth, Finance Coordinator
2. Catherine Locastro, Regional Finance Director

Appellant's Witnesses:

None

ISSUES

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

FINDINGS OF FACTS

1. Respondent is a residential health care facility, specifically a nursing home, within the meaning of PHL § 2801.2 and 10 NYCRR 415.2(k), located in St. James, Suffolk County, New York.

2. The Appellant was admitted to the Facility on [REDACTED] 2022, from [REDACTED] Hospital following a [REDACTED] and is currently a private pay resident. (ALJ Ex. II, Ex. 1; T. Butterworth 5:34.)

3. By notice dated [REDACTED] 2023, the Respondent advised the Appellant of its determination to discharge her on [REDACTED] 2023, on the grounds that she has failed, after reasonable and appropriate notice, to pay for her stay at the Facility. (ALJ Exhibit I.)

4. As of [REDACTED] 2023, the Appellant had an outstanding balance owed to the Facility in the amount of \$ [REDACTED] with a balance due as of [REDACTED] 2023, in the amount of \$ [REDACTED] (Exhibit 5.)

5. The discharge notice advised the Appellant that she would be discharged to the [REDACTED]. (ALJ Exhibit I.)

6. The Appellant remains at the Facility pending the outcome of this hearing.

APPLICABLE LAW

A residential health care facility, or nursing home, is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital. PHL § 2801; 10 NYCRR 415.2(k). Transfer and discharge rights of nursing home residents have been codified in PHL § 2803-z and set forth at 10 NYCRR 415.3 which provides, in pertinent part,

(i) . . .

(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;

(vi) [the Facility must] provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility, in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and provide a discharge summary pursuant to section 415.11(d) of this Title;

The Respondent has the burden of proving that the discharge is necessary and that the discharge plan is appropriate. 10 NYCRR 415.3(i)(2)(iii)(b). The post-discharge plan of care is to be developed "with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment and assure that needed medical and supportive service have been arranged and are available to meet the identified needs of the resident". 10 NYCRR 415.11(d)(3).

DISCUSSION

Reason for Discharge

The Appellant was admitted to the Facility in [REDACTED] 2022 and is currently a private pay resident. (Exhibit 8; T. Butterworth 5:34.) As stated in the [REDACTED] 2023, discharge notice, the Respondent advised the Appellant of its determination to discharge her on [REDACTED], 2023, on the grounds that she has failed, after reasonable and appropriate notice, to pay for her stay at the Facility. (Exhibit ALJ I.) As of [REDACTED] 2023, the Appellant had an outstanding balance owed to the Facility in the amount of \$ [REDACTED] with a balance due to the facility in the amount of \$ [REDACTED] for the period through [REDACTED] 2023. (Exhibit 5; T. Butterworth 9:08.) The Appellant did not dispute the amount due to the Facility. The Appellant has filed for Medicaid and by

notice dated [REDACTED], 2023, received a partial denial (for the period prior to and including [REDACTED] 2022) and a partial acceptance (with limited coverage effective [REDACTED] 2022) becoming eligible for benefits [REDACTED] 2024. (Exhibit 7; T. Butterworth 11:15.)

The Appellant filed for a fair hearing on [REDACTED] 2023¹, to challenge the denial portion of the Medicaid decision and believes that eligibility may be changed to [REDACTED] / [REDACTED] 2023, or the "best-case scenario" to "the [REDACTED] of 2023 if additional documentation is provided at the fair hearing. (T. McKenna 13:47-13:58, 16:24-16:40; 30:30.) The Facility has been receiving payments in various amounts on the Appellant's behalf over the last year. (Exhibit 5; T. Butterworth 42:15.)

The Appellant's argument that the pending Medicaid appeal should stay the discharge is unpersuasive. The Appellant has been approved for Medicaid, and it is the application for Medicaid itself which triggers the stay described by the regulations. The current appeal is regarding the Appellant's eligibility date, as she has already been approved for Medicaid. There is a period of over 14 months of the Appellant's ineligibility for Medicaid between the Appellant's application and her benefits beginning. Given the payments that are being made on the Appellant's behalf, and assuming the Appellant's Medicaid appeal is successful to some degree, there will still be a period of no Medicaid coverage for which time the Appellant currently owes and will continue to owe a balance to the Facility for the Appellant's care.

The Facility has shown that it has provided reasonable and appropriate notice to the Appellant of the amounts due, and the Appellant has failed to pay for her stay. Therefore, discharge for nonpayment is permissible.

Discharge Location

The Facility made referrals to eight (8) of its associated facilities throughout New York state, seven (7) of which have declined to accept the Appellant. (Exhibit 2.) The Facility's [REDACTED] location, [REDACTED], [REDACTED], has agreed to accept the Appellant. (Exhibit 3.) The Facility sent referrals to three additional facilities in [REDACTED] County which were not associated with

¹ A hearing was originally scheduled for [REDACTED], 2023, which hearing was adjourned and though a request was made for a new hearing date in [REDACTED] 2023, no new hearing date has been scheduled. (T. McKenna 14:16-14:50.)

their organization. (T. Butterworth 21:02.) There are many more facilities in ██████ County, all of which the Appellant would qualify for medically, but the Facility did not make referrals to these facilities. (T. Butterworth 22:19-22:43.) The Facility did not discuss with the Appellant or her ██████/designee the Appellant's discharge location. (T. Butterworth 23:09.)

The Appellant's family has requested a hospice placement and the Appellant was referred to hospice on three occasions. She was approved for home hospice each time but not approved for inpatient hospice. At the request of the Appellant's family, another referral to hospice was made on ██████, 2023, with the same result; the Appellant was accepted for home hospice and not inpatient hospice. The family was presented with the home hospice option but was not willing to bring the Appellant home and provide hospice at home. (T. McKenna 16:59; T. Locastro 24:00-24:33.)

The proposed discharge location is another skilled nursing facility which is a great distance from ██████ County where the Appellant is now. The Appellant argues that due to her condition, that she has qualified medically for hospice, it would be harmful to her to make the trip to ██████ thus ██████ is not an appropriate discharge location. (T. McKenna 17:37-17:51.)

In determining an appropriate discharge location, to the extent possible, 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 her input taken into consideration. 10 NYCRR 415.11(d)(3). Here, neither the Appellant nor her ██████ were included in the discharge location planning. The Facility did not ask the Appellant if the ██████ location was acceptable.

CONCLUSION

The Facility has shown that it has provided reasonable and appropriate notice to the Appellant of the amounts due, and the Appellant has failed to pay in full for her stay. However, a post-discharge plan of care is to be developed "with the participation of the resident and his or her family". 10 NYCRR 415.11(d)(3); 10 NYCRR 415.3(i)(b). Here, the Facility readily admitted that it did not discuss the discharge plan with either the Appellant or her ██████/representative.

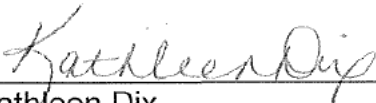
DECISION

Luxor Nursing and Rehabilitation at Mills Pond Center's determination to discharge the Appellant was correct, but its discharge plan is not appropriate.

1. Luxor Nursing and Rehabilitation at Mills Pond Center is not authorized to discharge the Appellant in accordance with its discharge plan.


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: Menands, New York
November 10, 2023



Kathleen Dix
Administrative Law Judge

To: Cassandra Butterworth, Finance Dept.
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