

cc: DOH.sm.DCAppeals@health.ny.gov by scan
SAPA File
BOA by scan



Department of Health

KATHY HOCHUL
Governor

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

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

January 19, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Queens Boulevard Extended Care
61-11 Queens Boulevard
Woodside, New York 11377

Jonathan Mawere, NHA
Queens Boulevard Extended Care
61-11 Queens Boulevard
Woodside, New York 11377

Barbara Phair, Esq.
Abrams Fensterman, LLP
3 Dakota Drive, Suite 300
Lake Success, New York 11042

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

COPY

DECISION

██████████
Appellant,

from a determination by

QUEENS BOULEVARD
EXTENDED CARE FACILITY

to discharge her from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Dates: January 18, 2024

Parties: ██████████
c/o Queens Boulevard Extended Care Facility
61-11 Queens Boulevard
Woodside, NY 11377
By: pro se

Queens Boulevard Extended Care Facility
By: Barbara Phair, Esq.
Abrams Fensterman, LLP
3 Dakota Drive, Suite 300
Lake Success, NY 11042

JURISDICTION

By notice dated [REDACTED] 2023, Queens Boulevard Extended Care Facility (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) 415.3(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. A digital recording was made of the proceeding.

HEARING RECORD

ALJ Exhibits: I – Letter with Notice of Hearing and Transfer/Discharge Notice [REDACTED]/24)

Facility Exhibits: 1 – eMedNY printout
2 – Facility invoice
3 – Social Work notes

Appellant Exhibits: None

Facility Witnesses: Kalpesh Amin, M.D., Medical Director
Naomi Aphunin, Director of Rehabilitation
Norrele Silvero, Director of Nursing
Michael Leahy, Controller
Stefani Chodkowski, Director of Social Work

Appellant Witnesses: [REDACTED] Resident

FINDINGS OF FACT

1. The Appellant has been a resident at the Facility since [REDACTED] 2021. (Testimony [T.] [REDACTED])

2. The Appellant receives Medicaid and is responsible for paying a net allowable monthly income (NAMI) of [REDACTED] per month. (Facility Ex. 2; T. Leahy.)

3. The Appellant was made aware of the amount owed to the Facility per month, and monthly invoices have been provided to her by mail since her admission to the Facility and additionally hand-delivered to her since [REDACTED] 2023. (Facility Ex. 1; T. Leahy, Chodkowski, [REDACTED].)

4. As of [REDACTED] 2024, the Appellant owed the Facility NAMI payments totaling [REDACTED]. (Facility Ex. 2; T. Leahy, [REDACTED].)

5. On [REDACTED], 2023, the Facility issued a Transfer or Discharge Notice to the Appellant, proposing discharge to [REDACTED] in [REDACTED] [REDACTED]. (ALJ Ex. I.)

6. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant has failed to pay for her stay at the Facility. (ALJ Ex. I.)

7. The Appellant timely appealed the Facility's discharge determination.

8. The Appellant has remained at the Facility during the pendency of the appeal.

ISSUES

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

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. (PHL § 2801[2][3]; 10 NYCRR 415.2[k].)

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations. (10 NYCRR 415.3[i][1].)

The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(b), which states:

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.

Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate.

DISCUSSION

Reason for Discharge

Michael Leahy, Controller, testified that the Appellant's NAMI is [REDACTED] per month and that she currently owes the Facility [REDACTED]. His testimony is supported by the evidence and is not disputed by the Appellant.

The Appellant testified at length as to the circumstances leading up to her admission to the Facility in [REDACTED] 2021. She testified that she had to put her home furnishings and other belongings into storage and pays a monthly storage bill in hopes of moving to an apartment and utilizing those items in the future. The Appellant also testified that she pays a monthly phone bill and purchases food every night because she does not eat the meals at the Facility. The Appellant also expressed dissatisfaction with the care she receives at the Facility, citing the failure of the Facility to give her a shower since her admission in [REDACTED] 2021, issues with getting to medical

appointments, and books disappearing from her room during a short departure to an Emergency Department for treatment.

The Appellant testified that her social security disability check is deposited directly into her account. While the Appellant may have other self-imposed expenses, as well as patient care complaints, they do not negate her responsibility to pay her NAMI to the Facility. The Facility has shown that it has provided reasonable and appropriate notice to the Appellant that her NAMI is due and owing and Appellant has failed to pay for her stay. Therefore, discharge for nonpayment is permissible.

Discharge Location

The Facility has proposed discharge to [REDACTED] in [REDACTED]. The proposed discharge location is a skilled nursing facility and provides the same level of care as the Facility. It is approximately [REDACTED] to [REDACTED] minutes away from the Facility when traveling by vehicle.

Kalpesh Amin, M.D., the Facility medical director, testified that the Appellant is medically stable for discharge to another skilled nursing facility. He further testified that the proposed discharge location is a safe discharge plan for the Appellant. Naomi Aphunin, Director of Rehabilitation, and Norrele Silvero, Director of Nursing, also both testified that the proposed discharge location is a safe discharge plan for the Appellant. Stefanie Chodkowski, Director of Social Work, testified that the only available safe discharge plan for the Appellant is discharge to another facility with the same level of care. Ms. Chodkowski testified that she sent out five referrals to skilled nursing facilities and [REDACTED] was the only one that accepted the Appellant. She also testified that the Appellant declined to be involved in identifying a safe discharge location.

The Appellant testified that she has been looking for a safe place to live in the community since her admission to the Facility in [REDACTED] 2021. The Appellant testified that she is wheelchair bound and needs a living space accessible without stairs. The Appellant testified that within the past few weeks she was referred to the [REDACTED] housing program and is now working with them to secure an accessible place within the community. The Appellant voiced no specific objections to the proposed discharge location, but rather opposes being transferred to another skilled nursing facility because she hopes to be placed in the community in the near future and does not want to go somewhere else in the meantime.

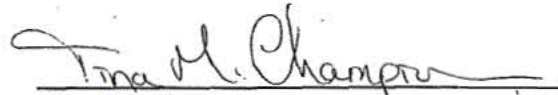
As noted by Ms. Chodkowski, the Appellant's ability to be safely discharged to housing in the community is dependent on arrangement of appropriate home care services, which would include utilization of a Hoyer lift and assistance of two people for transfers, in addition to locating a wheelchair accessible unit. While such an arrangement may be possible, no known arrangement is currently available, and the Facility cannot be expected to continue to incur expenses based on the Appellant's refusal to pay her NAMI. I find that the discharge location is appropriate for the Appellant.



DECISION

Queens Boulevard Extended Care Facility has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Queens Boulevard Extended Care Facility is authorized to immediately 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: Albany, New York
January 19, 2024


Tina M. Champion
Administrative Law Judge

TO: 
c/o Queens Boulevard Extended Care Facility
61-11 Queens Boulevard
Woodside, NY 11377


Jonathan Mawere, Administrator
Queens Boulevard Extended Care Facility
61-11 Queens Boulevard
Woodside, NY 11377
JMawere@qbecf.com

Barbara Phair, Esq.
Abrams Fensterman, LLP
3 Dakota Drive, Suite 300
Lake Success, NY 11042
BPhair@Abramslaw.com