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**Department
of Health**

KATHY HOCHUL
Governor

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

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

March 1, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Waters Edge at Port Jefferson
150 Dark Hollow Road
Port Jefferson, New York 11777

Lindsay Skolnik, DSW
Waters Edge at Port Jefferson
150 Dark Hollow Road
Port Jefferson, New York 11777

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

[REDACTED]

Appellant,

from a determination by

**Water's Edge Rehab and Nursing Center
at Port Jefferson,**

Respondent,

to discharge her from a residential
health care facility.

COPY

**DECISION
AND
ORDER**

#DA24-6249

Hearing Before:

Natalie J. Bordeaux
Administrative Law Judge

Hearing Location:

Cisco WebEx videoconference

Hearing Dates:

January 24 and February 29, 2024
The record closed February 29, 2024

Parties:

Water's Edge Rehab and Nursing Center at Port Jefferson
150 Dark Hollow Road
Port Jefferson, New York 11777
By: Lindsay Skolnik, DSW

[REDACTED]
Pro Se

JURISDICTION

By notice dated [REDACTED] 2024, Water's Edge Rehab and Nursing Center at Port Jefferson (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

Facility witnesses: Lindsay Skolnik, Director, Social Work
Jeryl Ann Oliva, Medicaid Coordinator

Facility exhibits: 1 [REDACTED], 2024 Discharge Notice)
2 (Admission Record)
3 (Minimum Data Set 3.0 Cognitive Patterns Assessment [REDACTED] 2024)
6 [REDACTED], 2024 Physician Progress Note)
7 (Physician Order Summary Report)
8 (Social Work Progress Notes)

Appellant witnesses: [REDACTED] Appellant

Appellant exhibits: None

The Notice of Hearing and Accompanying Cover Letter were entered into evidence as ALJ Exhibit I. Digital recordings of the hearing were made. (43:03 in duration on January 24, 2024 and 32:11 in duration on February 29, 2024.)

ISSUES

Has the Facility established that its determination to discharge the Appellant was permissible pursuant to 10 NYCRR § 415.3(i)(1)(i)(b) and that the discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old woman who was admitted to the Facility on [REDACTED] 2023 for short-term rehabilitation after hospitalization with primary diagnoses of [REDACTED] and [REDACTED] (Exhibit 2; January 24 Recording @ 13:30.)

2. In accordance with Medicare coverage guidelines propounded by the Centers for Medicare and Medicaid Services (CMS), the Appellant's Medicare insurer and community-based Medicaid coverage covered the full cost of the first 100 days of the Appellant's stay (, 2023 through 2023). From 2023 onward, the Appellant has incurred a daily private pay rate of payable to the Facility. (January 24 Recording @ 14:40, 20:09, 21:50.)

3. In 2023, Jeryl Ann Oliva, the Facility's Medicaid Coordinator, approached the Appellant about filing an application for nursing home/chronic care Medicaid on the Appellant's behalf. However, an application was not filed. (January 24 Recording @ 20:55.)

4. By notice dated 2024, the Facility determined to discharge the Appellant on 2024 because she has failed, after reasonable and appropriate notice, to pay for her stay. The notice proposes to discharge the Appellant to the , located at . (Exhibit 1.)

5. The Facility has not provided any notification to the Appellant of her responsibility for the cost of her stay other than the , 2024 discharge notice. (January 24 Recording @ 26:16.)

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

APPLICABLE LAW

A residential health care facility (also referred to in the 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).

Regulations at 10 NYCRR § 415.3(i) describe the transfer and discharge rights of residential health care facility residents. They state, 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... 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.

The residential health care facility must prove that the discharge was necessary, and the discharge plan was appropriate. 10 NYCRR § 415.3(i)(2)(iii)(c); State Administrative Procedure Act § 306(1).

DISCUSSION

The Facility determined to discharge the Appellant, effective [REDACTED] 2024, on the grounds that she “has failed, after reasonable and appropriate notice, to pay for...a stay at the facility.” (Exhibit 1.) The Facility offered no evidence to show that the Appellant was ever notified that she was responsible for the cost of her stay before it issued the [REDACTED] 2024 discharge notice. In [REDACTED] 2023, Medicaid Coordinator Jeryl Ann Oliva asked the Appellant whether she would like to apply for nursing home/chronic care Medicaid coverage, but was discouraged by the Appellant’s non-responsiveness. (January 24 Recording @ 20:55; Exhibit 8.) Such an exchange does not constitute reasonable and appropriate notice for the Appellant to understand that she was obligated to pay for, or have Medicaid pay for, the cost of

her stay. At the time of Ms. Oliva's attempted discussion with the Appellant, no amount was even payable and owing to the Facility. The Facility has failed to establish that the Appellant has failed to pay for her nursing home stay after reasonable and appropriate notice.

Given the Facility's failure to establish the basis for discharging the Appellant stated on the 2024 notice, review of the Facility's proposed discharge plan (in) is not necessary. It is noted that the Appellant's physician has determined the Appellant does not require further skilled services, and that her conditions are medically stable and can be managed as an outpatient. (Exhibit 6.) Any Facility determination to discharge the Appellant on those grounds and with such a discharge plan will require a new notice of discharge affording the Appellant the right to be heard on those issues.

The Appellant is encouraged to continue working with Facility staff to submit her nursing home/chronic care Medicaid application, as the Appellant's current Medicaid coverage precludes her placement at an assisted living facility and limits prospective discharge planning to consideration of only community-based settings.

This hearing is limited to a review of the discharge notice. Inasmuch as the Facility has failed to meet its burden of establishing that discharge for the stated reason was correct, the Appellant cannot be discharged pursuant to that notice.

DECISION AND ORDER

1. Water's Edge Rehab and Nursing Center at Port Jefferson has failed to establish that its determination to discharge the Appellant was permissible pursuant to 10 NYCRR § 415.3(i)(1)(i)(b).
2. Water's Edge Rehab and Nursing Center at Port Jefferson is not authorized to discharge the Appellant pursuant to its [REDACTED], 2024 notice.

Dated: February 29, 2024
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge