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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 8, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Sans Souci Rehabilitation and Nursing
115 Park Avenue
Yonkers, New York 10703

Aryeh Schachter, NHA
Sans Souci Rehabilitation and Nursing
115 Park Avenue
Yonkers, New York 10703

Ken Kern, Esq.
Cona Elder Law, PLLC
225 Broad Hollow Road, Suite 200
Melville, New York 11747

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

Sans Souci Rehabilitation & Nursing Center
Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION

DA24-6253

Hearing Before: Jeanne T. Arnold
Administrative Law Judge

Held via: WebEx Videoconference

Hearing Dates: February 8 and 29, 2024

Parties: Sans Souci Rehabilitation & Nursing Center
115 Park Avenue
Yonkers, New York 10703
By: Ken Kern, Esq.
Cona Elder Law, PLLC
225 Broad Hollow Road
Suite 200
Melville, New York 11747

[REDACTED]
Sans Souci Rehabilitation & Nursing Center
Pro Se

JURISDICTION

Sans Souci Rehabilitation & Nursing Center (Facility), a residential health care facility
subject to Article 28 of the New York Public Health Law (PHL), determined to discharge resident
[REDACTED] (Appellant) from care and treatment in the Facility. The Appellant appealed

the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR 415.3(i).

HEARING RECORD

Facility witnesses: Sharon Mathew, Director of Social Work
Bernice Devasahayam-Persaudie, Finance Coordinator
Aryeh Schachter, Administrator

Facility exhibits: 1-10

Appellant witnesses: [REDACTED], Appellant

Appellant support: Marnie Mallah, Ombudsperson
[REDACTED], Appellant's [REDACTED] (2/29/24 only)

Appellant exhibits: None

ALJ exhibit: I (Notice of Hearing and Transfer/Discharge Notice)

Digital recording (R) of the hearing was made (R Day 1 1h:35m; R Day 2 19m). Testimony is indicated by "T".

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old woman who was admitted to the Facility on [REDACTED], 2023 from [REDACTED] Hospital with primary diagnoses of a [REDACTED] [REDACTED]. (Exhibit 10.)
2. The Appellant was approved for Medicaid beginning [REDACTED] 2023. The Appellant's eligibility for Medicaid includes a requirement that she remit a certain amount of her income (net available monthly income [NAMI]) to the Facility for each month of her stay totaling [REDACTED] (Exhibits 1, 2; T Persaudie.)
3. The Facility repeatedly notified the Appellant, both verbally and in writing, that she was required to pay her NAMI to the Facility. (Exhibits 5, 6; T Persaudie.)

4. The Appellant made a few payments but, as of [REDACTED] 2024, owed the Facility [REDACTED] for her unpaid NAMI. (Exhibit 3.)

5. By notice dated [REDACTED] 2024, the Facility determined to discharge the Appellant on [REDACTED] 2024, because she failed, after reasonable and appropriate notice, to pay for her stay at the Facility. The notice advised the Appellant that she would be discharged to [REDACTED] [REDACTED], a nursing home in [REDACTED], [REDACTED]. (Exhibit I.)

6. On [REDACTED] 2024, the Appellant requested this hearing to contest the Facility's discharge determination. The Appellant remains at the Facility pending the outcome of the hearing.

ISSUE

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

APPLICABLE LAW

A residential health care facility, or 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).

Public Health Law § 2803-z and regulations at 10 NYCRR 415.3(i) describe the transfer and discharge rights of residential health care facility residents.

Regulations at 10 NYCRR 415.3(i) 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 facility must prove that the discharge was necessary and the discharge plan appropriate. 10 NYCRR 415.3(i)(2)(iii)(b); 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 I.) The Appellant admitted that she owes the money as detailed by the Facility’s invoice dated [REDACTED] 2024. (Exhibit 3; T Appellant.) She explained that she is unable to both pay the Facility’s bill and continue to maintain her home outside of the Facility, so she has chosen not to pay except for a few sporadic payments. (Exhibit 3.) The Facility has proven that the Appellant’s discharge was necessary for non-payment and the Appellant concedes same. (Exhibit 3; T Appellant.)

During the first day of the hearing, the Appellant contended that although she admitted failing to pay her Facility charges, the discharge plan to [REDACTED] was not appropriate because the Appellant believed that the plan all along was for her to return home. (R Day 1 1:01-1:04.) The Appellant expressed that she felt “blind-sided” by the Facility’s proposed discharge plan when she received the Facility’s notice dated [REDACTED] 2024, because she thought all were working towards the same goal. (R Day 1 1:05.) The Appellant admitted that she refused to meet with the representative from [REDACTED] because she did not think it was appropriate when she had requested an appeal of the discharge notice. (R Day 1 1:15.) The parties agreed to a three-week

adjournment of the hearing for the Facility to gather social work notes detailing discharge planning and for the Appellant to explore discharge options.

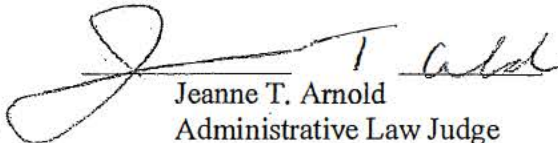
On the adjourned date, the Facility admitted social work records which detail that referrals to other nursing homes were made on behalf of the Appellant. Ultimately, [REDACTED], which provides the same level of care as the Facility, accepted the Appellant and was the best option because of its proximity to the Facility. (Exhibit 9.) Social work representatives also met with the Appellant, but the Appellant indicated that she did not wish to either explore different discharge options or to visit [REDACTED]. (Exhibit 8.)

The Appellant voiced no specific objection to the proposed discharge location. She indicated that she still is working with outside agencies so that she can eventually move home but, since she currently cannot do so, she understands and is resigned to move to [REDACTED] in the meantime. The Appellant's ability to be safely discharged to home is dependent on arrangement of appropriate home care services including utilization of a hooyer lift and assistance of two people for transfers. (Exhibit 8.) While such an arrangement may be possible, no known arrangement is currently available and the Appellant is not entitled to remain at the Facility without paying her charges. The record reflects that the discharge plan is appropriate. (Exhibits 7, 8, 9.)

DECISION

Sans Souci Rehabilitation & Nursing Center has established that its determination dated [REDACTED] 2024 to discharge the Appellant from its Facility to [REDACTED] on [REDACTED] 2024 is authorized and that the discharge plan is appropriate.

Dated: March 8, 2024
Rochester, New York


Jeanne T. Arnold
Administrative Law Judge