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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

[REDACTED]
c/o Queens Boulevard Extended Care
61-11 Queens Boulevard
Woodside, New York 11377

Barbara Phair, Esq.
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RE: In the Matter of [REDACTED] – 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

COPY

DECISION

QUEENS BOULEVARD EXTENDED CARE FACILITY

Respondent,

to discharge her from a residential health care facility.

Hearing Before: Jean T. Carney
Administrative Law Judge

Held via: Cisco WebEx videoconference

Hearing Date: March 5, 2024¹

Parties: Queens Boulevard Extended Care Facility, Respondent
jmawere@qbecf.com

By: Barbara Phair, Esq.
Abrams Fensterman, LLP
BPhair@abramslaw.com

[REDACTED], Appellant

[REDACTED]
By: Patrick Mielo, Esq.
pmielo@yahoo.com

¹ The hearing was originally scheduled for February 22, 2024. It was adjourned over the facility's objection because the Appellant retained an attorney who was unable to appear on the original date.

JURISDICTION

By notice dated [REDACTED] 2024, Queens Boulevard Extended Care Facility (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant) from the Facility and place her 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- 6); and the testimonies of Kalpesh Amin, MD, Attending Physician; Norrele Silvero, Director of Nursing (DON); Maureen Sammon, Medicaid Coordinator; and Stefanie Chodkowski, Director of Social Services. The Appellant testified in her own behalf and presented no documentary evidence. The Notice of Hearing with discharge notice, and the resident face sheet were admitted as ALJI, 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 female who was admitted to the Facility on [REDACTED], 2023 with relevant diagnoses of [REDACTED]

[REDACTED]

[REDACTED] (T Dr. Amin; ALJ II).

2. Medicare paid for the Appellant's stay at the facility until [REDACTED] 2023. The Medicaid Coordinator spoke with the Appellant on several occasions regarding payment options. On [REDACTED] 2023, the Medicaid Coordinator gave the Appellant a bill and advised her that she could either pay the bill, apply for Medicaid, or accept a 30 day discharge notice. (T Sammon; Exhibit 3).

3. The Appellant was already covered under community Medicaid, so with her approval, the Facility applied to convert her coverage to nursing home Medicaid. The Appellant was approved on [REDACTED], 2023, retroactive to [REDACTED], 2023. The Medicaid program calculated the Appellant's monthly contribution, also known as the Net Available Monthly Income (NAMI), as [REDACTED] (T Sammon; Exh 1).

4. After the Appellant was approved for Medicaid coverage, the Facility mailed invoices to her residence in the community. (Exhs 2 and 6; T Sammon).

5. On [REDACTED], 2024, the Director of Social Services met with the Appellant and gave her the most recent bill from the facility. The Appellant was informed that she would be discharged to [REDACTED] on [REDACTED], 2024. The facility issued its discharge notice the following day, [REDACTED] 2024, but did not give the notice to the Appellant until [REDACTED] 2024. The proposed discharge date on the notice is [REDACTED] 2024. Additionally, on or around [REDACTED] 2024, the Appellant was served with a lawsuit filed against her by the facility alleging an outstanding debt of over [REDACTED]. (Exhs 4, 5 and ALJ I; T Sammon and [REDACTED]).

6. The proposed discharge location is a skilled nursing facility where the Appellant would receive similar care as she currently receives. The facility discussed

three alternative locations with the Appellant; but they did not accept her. (Exh ALJ I; T Amin and Chodkowski).

7. The Appellant would like to return to her home in the community. She has been approved for home health care services; but believes she needs about one more month of physical therapy before she can be safely discharged to her home. The Appellant's treatment team has determined that because the Appellant needs assistance with all activities of daily living (ADLs), she requires the services of a skilled nursing facility; but has also discussed modifications to the Appellant's home that would enable her to be safely discharged there. (Exh 5; T Chodkowski and [REDACTED]).

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 [3rd Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

DISCUSSION

The facility failed to show that the Appellant was given reasonable and appropriate notice of her failure to pay for services rendered by the facility. The evidence reflects that the Appellant's Medicare benefits ended on [REDACTED] 2023. Yet the budget letter indicated that her Medicaid coverage began on [REDACTED] 2023. This discrepancy was not accounted for in any of the evidence submitted by the facility, and it appears that the Appellant's charges for [REDACTED] was not pro-rated. The facility has not shown that the amount alleged as being due and owing is accurate.

In addition, the evidence presented by the facility indicates that the Appellant only received one bill on [REDACTED], 2023, before she applied for Medicaid, and one bill on [REDACTED] 2023, the day before the discharge notice was issued. Invoices were mailed to the Appellant's home, despite the fact that the facility knew she was not at that address. It is noted, however, that the facility's debt collector addressed correspondence to the Appellant at the facility. (Exh 4). The facility knew, or should have known, that the Appellant was not receiving monthly invoices.


The facility has not complied with the requirements governing discharge or transfers of a resident of a nursing home. The facility must provide the resident with notice of transfer or discharge "at least 30 days before the resident is transferred or discharged." (10 NYCRR § 415.3[[i][1][iv]]). At first, the facility attempted to discharge the Appellant with only three days' notice, as documented by Ms. Chodkowski in her progress note dated [REDACTED] 2024. (Exh 5). The facility then issued a discharge notice; but waited 15 days to give it to the Appellant. Consequently, she was not provided 30 days' notice. For this reason, the facility's determination to discharge the Appellant

pursuant to the notice dated [REDACTED] 2024 is overturned, and the Appellant's appeal is sustained.

DECISION

1. The Facility has failed to provide the Appellant with appropriate notice of its intent to transfer her to another facility and may not discharge the Appellant pursuant to the terms of the discharge notice dated [REDACTED], 2024.
2. This Decision may be appealed to a court in the appropriate jurisdiction.
3. This Decision shall become effective upon service to the parties.

**DATED: Albany, New York
March 8, 2024**


JEAN T. CARNEY
Administrative Law Judge

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