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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

April 22, 2024

**CERTIFIED MAIL/RETURN RECEIPT**

[REDACTED]  
c/o The Phoenix Rehab & Nursing Center  
140 Saint Edwards Street  
Brooklyn, New York 11201

David Roll, Administrator  
The Phoenix Rehab & Nursing Center  
140 Saint Edwards Street  
Brooklyn, New York 11201

[REDACTED]

**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:nm  
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

**The Phoenix Rehabilitation & Nursing Center,**

Respondent,

to discharge her from a residential  
health care facility.

COPY

DECISION  
AFTER  
HEARING

Hearing before:

Kathleen Dix  
Administrative Law Judge  
April 3 and 9, 2024  
By WebEx Videoconference

Parties:

David Roll, Administrator  
The Phoenix Rehabilitation & Nursing Center  
140 St. Edwards Street  
Brooklyn, New York 11201

[REDACTED]  
c/o The Phoenix Rehabilitation & Nursing Center  
140 St. Edwards Street  
Brooklyn, New York 11201

## JURISDICTION

By notice dated [REDACTED], 2024, The Phoenix Rehabilitation & Nursing Center, (Respondent or Facility), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge / transfer [REDACTED] (Appellant) from care and treatment in its facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) Section 415.3(i).

The hearing was held on April 3 and April 9, 2024, 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. (1h 31m in total.) Evidence was received and witnesses were examined. A digital recording of the hearing was made.

## HEARING RECORD

### ALJ Exhibits:

1. Notice of Hearing

### Respondent's Exhibits:

1. Notice of Discharge (3 pages)
2. Admission Record, Social Services Evaluation, and [REDACTED] Consultation notes (9 pages)
3. Social Services Progress Notes (10 pages)
4. New York City Human Resources Administration, Department of Social Services (DSS) Net Available Monthly Income (NAMI) Calculations (7 pages)

### Appellant's Exhibits:

None

### Respondent's Witnesses:

1. David Roll, Administrator
2. Brenda Wyatt, Medicaid Finance Coordinator

### Appellant's Witnesses:

1. [REDACTED], Appellant
2. [REDACTED], Appellant's [REDACTED]

### Also present on April 9, 2024 hearing:

1. [REDACTED], Appellant's [REDACTED]

## ISSUES

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

## FINDINGS OF FACTS

1. The Respondent, The Phoenix Rehabilitation & Nursing Center, 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 Brooklyn, New York.

2. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2022, for short term rehabilitative care following a hospitalization at [REDACTED]. The Appellant's primary diagnosis is [REDACTED] (Exhibit 2.)

3. By notice dated [REDACTED], 2024, the Respondent advised the Appellant of its determination to discharge her on [REDACTED], 2024, on the grounds that she has failed to pay for her stay, the charges are not in dispute and Medicaid is not pending. (ALJ Exhibit I.)

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

5. The primary payor for the Appellant is Medicaid. (Exhibit 2.)

6. DSS calculated the Appellant's "non-chronic care" required contribution toward the cost of her care at the Facility under the Medicaid program based upon the Appellant's NAMI. (Exhibit 4.)

7. The Respondent billed the Appellant monthly for her required contribution, *i.e.*, her NAMI. There is an overall outstanding balance due from the Appellant to the Respondent of \$ [REDACTED] as of [REDACTED] 2024. (Exhibit 4.)

8. The Appellant timely appealed the Respondent's discharge determination and proposed discharge location.

9. 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(i) which provides, in pertinent part, that the facility shall:

(1) (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. 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) 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 or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

## DISCUSSION

### Grounds for Discharge

As stated in the notice dated [REDACTED] 2024, the Respondent advised the Appellant of its determination to discharge her on [REDACTED] 2024, on the grounds that the Appellant has failed to pay for her stay at the facility, the charges are not in dispute, and Medicaid is not pending. (ALJ Exhibit I.)

David Roll, the Facility's administrator and Brenda Wyatt, the Facility's Medicaid finance coordinator testified at the hearing on April 3, 2024 and explained the circumstances surrounding the outstanding balance owed to the Facility by the Appellant. The balance owed by the Appellant as of April 2, 2024 was \$ [REDACTED] (Exhibit 4). This balance included the period of [REDACTED], 2023 through [REDACTED], 2023 which was not covered by insurance. There is a balance owed to the Facility for this period of "private pay" in the amount of \$ [REDACTED]. For the months of [REDACTED] through [REDACTED] 2023, the Appellant's NAMI was calculated to be \$ [REDACTED] per month and for the months [REDACTED] through [REDACTED] 2024, the Appellant's NAMI was calculated to be \$ [REDACTED] per month. The total amount due to the Facility for the Appellant's NAMI liability for the period [REDACTED] 2023 through [REDACTED] 2024 is \$ [REDACTED]. The instigating factor for the Notice of Discharge was the non-payment of the NAMI amount of \$ [REDACTED] (T.<sup>1</sup> Roll, Wyatt.) The Facility's witness confirmed that the NAMI budget letter was given directly to the Appellant and the Appellant's [REDACTED] in [REDACTED] 2023, and there have been numerous conversations with the Appellant, her [REDACTED] and Ms. [REDACTED] regarding the appellant's financial responsibility to the Facility. (T. Wyatt 22:15, 24:12; Roll 47:17.)

The Appellant testified on her own behalf. The Appellant asked for clarification of the NAMI amount and stated that she had not been paying it. (T. Appellant 17:49-17:55.) When asked why she hadn't been paying it, the Appellant deferred to her [REDACTED] Ms. [REDACTED] (T. Appellant 18:08.) The Appellant explained that in order to get money to pay the Facility she has to submit an invoice to her "company", and she is not "running

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<sup>1</sup>All testimony is from the April 3, 2024 hearing unless otherwise noted.

away". (T. Appellant 1:07:28.) The Appellant would like to stay at the Facility. (T. Appellant 00:23-00:33 on 4/10/23.)

The Appellant's [REDACTED] Ms. [REDACTED] asserted that the reason the Appellant's NAMI was not paid was because the amount due to the Facility was never stated in writing and the Appellant was not afforded an opportunity to make any payments. (T. [REDACTED] 18:35-18:47.) Ms. [REDACTED] further asserted that there have been miscommunications between the Appellant and the Facility. (T. [REDACTED] 19:04.) Ms. [REDACTED] testified that the Appellant was not disputing the NAMI amount but wanted an explanation for the balance due, and the Appellant was not offered any payment options at the time the NAMI obligation was presented to the Appellant. (T. [REDACTED] 50:23-50:48.) Although the Facility's witness confirmed that the NAMI budget letter was given directly to the Appellant and the Appellant's [REDACTED] in [REDACTED] 2023, Ms. [REDACTED] disputed that information. (T. Wyatt 22:15, 24:12; Shell 20:05, 20:47, 23:27.) Ms. [REDACTED] asserted that the Appellant is cognitively impaired and at times possibly [REDACTED] and therefore, the Facility should be communicating directly with her, and it was inappropriate of the Facility to give the discharge notice directly to the Appellant without first notifying Ms. [REDACTED] and the Appellant's [REDACTED] (T. [REDACTED] 4:38-5:04, 33:30, 33:41, 34:02.) Finally, Ms. [REDACTED] objected to the Appellant signing the Social Security representative payee form without Ms. [REDACTED] both reviewing it first and being with the Appellant as she signed it. (T. [REDACTED] 1:01-1:02.)

The record does not support Ms. [REDACTED] assertion that the Appellant is cognitively impaired. In a consultation noted dated [REDACTED] 2024, Dr. Ogunfowora stated that the Appellant meets the criteria to have capacity, that she has good understanding, appreciation, reasoning, and expression of her choice when it comes to her medical decisions. (Exhibit 2.) Further, there is nothing in the record to indicate that Ms. [REDACTED] has the legal authority to act on the Appellants behalf or that the Appellant cannot act on her own behalf.

The Respondent has shown that it has provided reasonable and appropriate notice to the Appellant of the amounts due, but that the Appellant has failed to pay for her stay. The Respondent has met its burden of establishing valid grounds for discharge and therefore the discharge of the Appellant for nonpayment is permissible. 10 NYCRR Section 415.3(h)(1)(i)(b).

Discharge Plan

The Appellant objects to the Respondent's discharge plan to refer her to [REDACTED] because the discharge notice was inappropriately served as it was not given to the Appellant's [REDACTED] and [REDACTED] before being presented to and signed by the Appellant. (T. Shell 4:38-5:04.) The Appellant has not challenged the appropriateness of the discharge location.

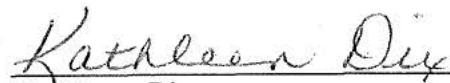
The proposed discharge location is another skilled nursing facility and there has been no evidence to show that it cannot properly care for the Appellant's medical needs. The Respondent has developed an appropriate post-discharge plan of care for the Appellant that addresses her long-term care and medical needs and how they will be met after discharge, as required by 10 NYCRR 415.3(i)(1)(vi).

DECISION

The Phoenix Rehabilitation & Nursing Center has established that the discharge of the Appellant was necessary and that the discharge plan was appropriate.

1. The Phoenix Rehabilitation & Nursing Center is authorized to discharge the Appellant on or after [REDACTED] 2024 pursuant to the Notice of Discharge dated [REDACTED], 2024.
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  
April 22, 2024

  
Kathleen Dix  
Administrative Law Judge

To: The Phoenix Rehabilitation & Nursing Center  
140 St. Edwards Street  
Brooklyn, New York 11201

[REDACTED]  
c/o The Phoenix Rehabilitation & Nursing Center  
140 St. Edwards Street  
Brooklyn, New York 11201