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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 10, 2024

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o The Grand Rehabilitation and Nursing  
at River Valley  
140 Main Street  
Poughkeepsie, New York 12601

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

Elizabeth Sofield, DSW  
The Grand Rehabilitation and Nursing  
at River Valley  
140 Main Street  
Poughkeepsie, New York 12601

**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: nm  
Enclosure

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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In the Matter of an Appeal, pursuant to  
10 NYCRR 415.3, by

██████████,  
Appellant,

from a determination by

The Grand Rehabilitation and Nursing at River Valley,  
Respondent,

to discharge her from a residential health care facility.

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COPY

Decision

Before: Kimberly A. O'Brien  
Administrative Law Judge

Held at: Videoconference via WebEx

Date: April 9, 2024

Parties: ██████████  
c/o Elizabeth Sofield, DSW  
[ESofield@thegrandrehabilitation.com](mailto:ESofield@thegrandrehabilitation.com)

Elizabeth Sofield, DSW  
The Grand Rehabilitation and Nursing at River Valley  
140 Main Street  
Poughkeepsie, New York 12601  
By: Barbara Phair, Esq.  
Abrams Fensterman, LLP  
3 Dakota Drive Suite 300  
Lake Success New York 11042  
[BPhair@Abramslaw.com](mailto:BPhair@Abramslaw.com)

On [REDACTED], 2024, The Grand Rehabilitation and Nursing at River Valley (Respondent or facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), issued a discharge notice stating that it determined to discharge [REDACTED] (Appellant or resident) from the facility and the resident appealed the discharge determination to the New York State Department of Health (Department) pursuant to Title 10 of the 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.

The Respondent offered four exhibits which were admitted into the record: 1. Current Invoice, 2. Medicaid Budget Letter / Net Available Monthly Income (NAMI) and Screenshot of Current NAMI amount, 3. Finance Department Notes/Contacts with Appellant, and 4. Discharge Planning Notes. The ALJ admitted the Notice of Hearing and the discharge notice, and marked it ALJ I. The facility presented Amit Saxena, Medical Director; Joelle Bowes, Assistant Director of Nursing Services; Elizabeth Sofield, Director of Social Work; Awa Cisse, Finance Coordinator; and Estee Friedman, Medicaid Biller. The Appellant did not offer any exhibits and testified on his own behalf. Robert Ruffin, Ombudsperson appeared and offered support to the Appellant.

#### FINDINGS OF FACT

1. The Appellant was admitted to the facility in [REDACTED] 2019. He is alert and oriented and able to make his needs known. The Appellant is [REDACTED], has a [REDACTED] and requires assistance with all activities of daily living, (ADLs) [Ex. 1; Testimony Saxena, Bowes.]

2. The Appellant receives Medicaid and is responsible for paying his net available monthly income (NAMI) to the facility, which includes his Social Security. Respondent has

regularly communicated with the Appellant about his responsibility to pay his NAMI and he has been advised about the outstanding NAMI balance. [Testimony Freidman, Cisse; Ex. 1, 2, 3.]

3. The Appellant has not paid his NAMI and at the time of hearing owed Respondent approximately \$ [REDACTED] [Testimony Freidman, Cisse; Ex. 1.]

4. The [REDACTED], 2024 Transfer/Discharge Notice (discharge notice) states that the transfer/discharge is necessary because the Appellant after reasonable and appropriate notice has failed to pay for his stay. [ALJ Ex. 1.]

5. The facility has proposed to transfer/discharge Appellant to another nursing home, [REDACTED] [REDACTED] provides the same level of care that the facility provides. [Testimony Sofield, Saxena; ALJ Ex. 1.]

6. The Appellant has remained at the facility during the pendency of the appeal. [ALJ Ex. 1.]

#### 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. Under SAPA §306(1), a decision in an administrative proceeding must be in accordance with substantial evidence.

#### ISSUES

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

#### DISCUSSION

There was a lengthy prehearing discussion. It was made clear to the parties that the only issues before the ALJ are whether the discharge is necessary and the proposed discharge location is available and appropriate to meet the resident's needs. Dr. Saxena testified that the resident has multiple comorbidities and has skilled needs that require the resident to receive nursing home care. Ms. Bowes testified that the resident is non ambulatory, requires the assistance of two staff for all ADLs, and requires three staff to provide wound care three times a week. Ms. Sofield testified that she was in charge of discharge planning and is aware the resident would like to return home. However, the clinical care team advised that at this time the resident requires nursing home care.

Ms. Sofield sent applications to several area nursing homes, and the Appellant was not accepted either because they did not accept his insurance or there was a waiting list.

The resident does not dispute that he has been told that his NAMI must be paid to the facility. The Appellant testified that he has an apartment in the community and he uses his NAMI to pay for it. He claims that the facility does not provide him with the physical therapy services he needs and he refuses to pay for services he is not receiving. The Appellant does not want to go to [REDACTED] because it is in [REDACTED] five hours away from his family, and it is a related facility and he wants nothing to do with Respondent's facilities. The Appellant testified that he wanted to remain at the facility to receive more physical therapy to get stronger and require only the assistance of one person with his ADL's, and allow time for his family members to be trained to care for him in the community

#### CONCLUSIONS

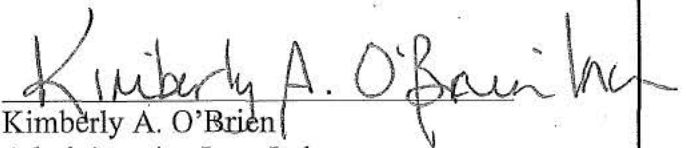
The Appellant has been repeatedly advised that he is required to pay his NAMI to the Respondent. The Appellant's complaints about the quality/quantity of services he receives at the facility does not negate his obligation to pay for his stay. It is undisputed that if he got stronger and needed less assistance, family members could be trained to care for him in the community. However, at this time the Appellant requires the services that a nursing home provides and local nursing homes have not accepted the resident. The Appellant has stated he will not pay for his stay, yet he is asking to remain at the facility for an indefinite period. The facility has shown that the resident has failed to pay for his stay after being provided with reasonable and appropriate notice; and that the proposed discharge plan is appropriate, as it is available and provides the same level of care.

DECISION

Respondent has established that its determination to discharge the Appellant was correct, and that its transfer/discharge location is appropriate.

1. Respondent is authorized to discharge the Appellant in accordance with its [REDACTED], 2024 discharge notice on or after [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: Albany, New York  
April 9, 2024

  
Kimberly A. O'Brien  
Administrative Law Judge