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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

May 17, 2024

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Hollis Park Manor
191-06 Hillside Avenue
Jamaica, New York 11423

Bari Cruger
Hollis Park Manor
191-06 Hillside Avenue
Jamaica, New York 11423

[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

**Hollis Park Manor
Nursing Home,**

Respondent,

to discharge him from a residential
health care facility.

COPY

**DECISION
AFTER
HEARING**

#DA24-6336

Hearing Before: Kendra Vergason
Administrative Law Judge

Held at: New York State Department of Health
by videoconference

Hearing Date: April 15, 2024

Parties: Hollis Park Manor Nursing Home
191-06 Hillside Avenue
Hollis, New York 11423

[REDACTED]
Pro se

2. The Appellant is capable of making his own decisions but is dependent on or requires the physical assistance of others with all activities of daily living (ADLs). His ██████████, serves as his representative and maintains their home in the community. (Exhibit 1.)

3. In ████████ 2023, Ms. Cruger had a conversation with Mrs. ████████ regarding Appellant's Medicaid recertification. Mrs. ████████ provided verification of income and resources to Ms. Cruger, as requested, so that Ms. Cruger could submit it to Medicaid. (T Cruger.)

4. On ████████ 2023, after receiving the Appellant's Medicaid renewal "Budget Explanation" from NYC HRA, Ms. Cruger called Mrs. ████████ and told her that Appellant "would now have a monthly income contribution. (Exhibits 2, 5; T Cruger.) Mrs. ████████ replied that she was unable to pay the nursing home because her ████████ income was being used to pay his bills in the community. (Exhibit 5; T Cruger, ████████ At the time of this call, there was no payment due or owing to the Respondent. (Exhibits 5, 6.)

5. Per the Medicaid budget explanation, effective ████████ 2023, the Appellant was determined to have net available monthly income (NAMI) of \$██████ that he is to pay to the nursing home each month towards the cost of his care. (Exhibits 2, 5; T Cruger.) The Appellant's Medicaid coverage had not previously required a NAMI contribution. (Exhibit 2; T ████████ Cruger.)

6. In ████████ Ms. Cruger called Mrs. ████████ and left her a message regarding the outstanding NAMI payment for ████████ (Exhibit 2; T Cruger.)

7. On ████████ 2024, Ms. Cruger called Mrs. ████████ and advised her of the amount due. Again, Mrs. ████████ stated that her ████████ income was being used to

pay his bills in the community, "and she asked, quite understandably, why she had never had to pay before." (T Cruger.) Ms. Cruger explained that due to the modified Medicaid procedures under the pandemic public health emergency, the Appellant had \$ ██████ NAMI for the past two years, but now that was over. Mrs. ██████ again stated that she would not pay. The following day, the Respondent referred the balance due to its attorneys for litigation for non-payment. (Exhibit 2; T Cruger.)

8. Mrs. ██████ is maintaining the Appellant's and her home in the community. It is the intention of both the Appellant and his ██████ that he will return home and the Appellant has requested discharge planning be done towards that end. (Exhibit 1; T Paikin, Chacko, Appellant, ██████)

9. The Appellant's treatment team determined that he still requires the services of a nursing home at this time because he needs physical assistance with all ADLs. (T Chacko, Paikin.)

10. By notice dated ██████ 2024, the Respondent determined to discharge the Appellant on ██████ 2024, because he has failed, after reasonable and appropriate notice, to pay for his stay. The notice proposes to discharge him to ██████ ██████, where he would receive the same level of care as he is currently receiving. (ALJ I; T Paikin, Chacko.)

11. The Appellant remains at the facility pending the outcome of this hearing.

ISSUES

Has Hollis Park Manor Nursing Home established that its determination to discharge the Appellant is authorized and that its discharge plan is appropriate?

APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, is a residential facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not need the services of a general hospital. PHL § 2801(2) and (3); 10 NYCRR 415.2(k).

The rights of residential health care facility residents are set forth at 10 NYCRR 415.3 which include financial rights under subsection (h) and transfer and discharge rights under subsection (i).

Pursuant to 10 NYCRR 415.3(i)(1)(b), the transfer and discharge of a resident is 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." If a resident becomes eligible for Medicaid, the facility may only charge the amount allowed by Medicaid. Such transfer or discharge is permissible only if a charge is not in dispute, no appeal or 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. 10 NYCRR 415.3(i)(1)(b).

The facility has the burden of proving that discharge of the resident is necessary and the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b); SAPA § 306(1).

DISCUSSION

The Respondent determined to discharge the Appellant, effective ██████ 2024, on the grounds that he "has failed, after reasonable and appropriate notice, to pay for... a stay at the facility." (Exhibit 1.)

In ██████████ 2023, Medicaid Coordinator Bari Cruger attempted to contact Mrs. ██████████ regarding the Appellant's financial liability towards the cost of his stay. Mrs. Cruger called Mrs. ██████████ on ██████████ 2024, and advised her of the amount due. Mrs. ██████████ did not understand why she was now being told she had to turn over all the Appellant's income each month when she had never previously had to do so. The several conversations between Ms. Cruger and Mrs. ██████████ provided ample opportunity for Mrs. ██████████ to ask questions, or request additional information or resources regarding the Appellant's NAMI obligation. The Appellant had notice of unpaid charges to the Respondent that he failed to pay.

The Respondent has met its burden to prove that the Appellant was given reasonable and appropriate notice of outstanding charges which he has failed to pay.

The proposed discharge location is ██████████. Ilene Paikin, Director of Social Work, testified that the proposed discharge location is a skilled nursing facility, provides the same level of care as the Respondent, and is a safe discharge location. Ms. Paikin testified that it is approximately █ miles away from the Respondent and a similar distance away from the Appellant's home in the community. The distance from the Appellant's and his ██████████ home to the Respondent facility is less than █ miles.

The Appellant and Mrs. ██████████ testified that they oppose the discharge to ██████████ because it is too far away. Mrs. ██████████ who is still employed and works full time, testified that she visits her ██████████ several times every week, but she will not be able to make such frequent visits to Hollis Park because it will take her over forty minutes each way to get there. ██████████ was identified as the discharge location only after the

