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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 12, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Riverdale, New York 10471

Anne Weisbrod, DSW
Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Riverdale, New York 10471

Ken Kern, Esq.
225 Broadhollow 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

COPY

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

[REDACTED]

DECISION

Appellant,

from a determination by

HEBREW HOME FOR THE AGED
AT RIVERDALE,

to discharge her from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Dates: April 10, 2024

Parties: [REDACTED]
c/o Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Riverdale, New York 10471
By: Pro se

Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Riverdale, New York 10471
By: Ken Kern, Esq.
225 Broadhollow Road, Suite 200
Melville, New York 11747

JURISDICTION

By notice dated [REDACTED] 2024, Hebrew Home for the Aged at Riverdale (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 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.

Evidence was received and witnesses were examined. A digital recording was made of the proceeding.

HEARING RECORD

ALJ Exhibits: I – Letter with Notice of Hearing and Transfer/Discharge Notice, [REDACTED]/24

Facility Exhibits: 1 – Budget Explanation, [REDACTED]/22
2 – Notice of Decision, [REDACTED] 23
3 – Budget Explanation, [REDACTED]/23
4 – Resident Statements
5 – BIMS, [REDACTED]/24
6 – Cona Elder Law letter, [REDACTED]/22
7 – Verified Complaint
8 – Progress Notes
9 – Hebrew Home letter [REDACTED] 23
10 – Hebrew Home letter, [REDACTED]/23
11 – PRI transmittals

Appellant Exhibits: None

Facility Witnesses: Jean Lareche, Patient Account Manager
Anne Weisbrod, Director of Social Services

Appellant Witnesses: [REDACTED]

FINDINGS OF FACT

1. The Appellant has been a resident at the Facility since [REDACTED] 2022. (Facility Exhibit [Ex.] 1 at p. 4.)
2. The Appellant has capacity to make all her own decisions and is independent, alert and oriented. (Facility Ex. 5; Testimony [T.] Weisbrod.)
3. The Appellant receives Medicaid and was responsible for paying a net allowable monthly income (NAMI) of \$ [REDACTED] per month from [REDACTED] 2022 through [REDACTED], 2023. Effective [REDACTED] 2024, to the present, the Appellant is responsible for paying a NAMI of \$ [REDACTED] per month. (Facility Exs. 1-3; T. Lareche.)
4. The Appellant was made aware of the amount owed to the Facility per month, and monthly invoices have been provided to her in person since her admission to the Facility. (Facility Exs. 1-4; T. Lareche.)
5. As of [REDACTED] 2024, the Appellant owed the Facility NAMI payments totaling \$ [REDACTED] (Facility Ex. 4; T. Lareche.)
6. The Appellant has not made a single payment in any amount to the Facility since her admission on [REDACTED] 2022. (Facility Ex. 4; T. Lareche.)
7. The Facility has made multiple and various attempts to collect payment from the Appellant, and it has made multiple and various attempts to engage with the Appellant in discharge planning. (Facility Exs. 4, 6, 7, 8, 9, 10; T. Lareche, Weisbrod.)
8. On [REDACTED] 2024, the Facility issued a Notice of Transfer or Discharge to the Appellant, proposing discharge to [REDACTED], [REDACTED], on [REDACTED], 2024. (ALJ Ex. I.)
9. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant has failed to pay for her stay at the Facility. (ALJ Ex. I.)

10. The Appellant timely appealed the Facility's discharge determination.

11. The Appellant has remained at the Facility during the pendency of the appeal.

ISSUES

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

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.

DISCUSSION

Reason for Discharge

Jean Lareche, Patient Account Manager, testified that the Appellant's NAMI was \$ [REDACTED] per month from [REDACTED] 2022 through [REDACTED], 2023, and is \$ [REDACTED] per month from [REDACTED] 2024 to the present. Mr. Lareche testified the Appellant currently owes the Facility \$ [REDACTED]. His testimony is supported by the evidence and is not disputed by the Appellant.

The Appellant's primary argument for why she should not be discharged from the Facility for failure to pay rests on her repeated inaccurate assertion that she received notice of the hearing two days prior and did not have time to secure an attorney or request an adjournment. However, the Appellant received notice of the hearing a week prior to the hearing, which notice was also sent to the attorney she had utilized in a collection action with the Facility in Supreme Court. (ALJ Ex. I; Facility Ex. 7; T. Weisbrod.) Her argument is not persuasive.

The Appellant provided no direct explanation for why she has not paid her NAMI, although she acknowledged that she has an apartment in the community where her [REDACTED] continues to live, and she stated that she would like to both maintain the apartment and stay at the Facility. While the Appellant may desire to maintain the apartment to provide for her [REDACTED] it does not negate her responsibility to pay her NAMI to the Facility. The Facility has shown that it has provided reasonable and appropriate notice to the Appellant that her NAMI is due and owing and the Appellant has failed to pay for her stay. Therefore, discharge for nonpayment is permissible.

The Appellant also stated that she has [REDACTED] and does not want to go to a different Facility while she is recovering. As the proposed discharge location is another skilled nursing facility a very short distance away, the discharge date is over two weeks away, and the Appellant participated in the full duration of this hearing, seemingly without issue, this argument is not persuasive.

Discharge Location

The Facility has proposed discharge to [REDACTED]

[REDACTED]. Anne Weisbrod, Director of Social Services, testified that the proposed discharge location is a skilled nursing facility, provides the same level of care as the Facility, and is a safe discharge location. Ms. Weisbrod testified that it is [REDACTED] [REDACTED] miles away from the Facility and about [REDACTED] miles away from the Appellant's apartment in the community.

The Appellant testified that she does not want to go to [REDACTED] because she likes where she currently is residing, she believes [REDACTED] is not suitable because of things that people who work there have allegedly told her, and she believes it is located in an area that is "not great."

[REDACTED] was identified as the discharge location only after the Facility made multiple attempts to involve the Appellant in the discharge planning. As the Appellant maintains an apartment in the community, the Facility first tried to arrange for that location to be safe for discharge, but the Appellant indicated she was unwilling to hire the necessary home care providers to make it safe. The Facility then secured a placement [REDACTED], another skilled nursing facility, in [REDACTED] 2023, but released the bed upon the Appellant stating that she would work with the Facility to make her apartment a safe discharge location. It thereafter became apparent to the Facility that the Appellant had no intention of taking steps to make her apartment a safe discharge location, and [REDACTED] was then identified as a placement.

While the Appellant enjoys living at the Facility, she cannot continue to do so without paying for her share of her stay and while causing the Facility to continue to incur expenses. The Appellant has made no compelling argument to support her contention that [REDACTED] not an


appropriate discharge location. The Facility has, however, met its burden to show that it is a safe and appropriate discharge location for the Appellant.



DECISION

Hebrew Home for the Aged at Riverdale has established that its determination to discharge the Appellant was correct, and that its discharge location is appropriate.

1. Hebrew Home for the Aged at Riverdale is authorized to discharge the Appellant in accordance with its discharge plan.
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 12, 2024


Tina M. Champion
Administrative Law Judge

TO: 
c/o Hebrew Home for the Aged at Riverdale
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Riverdale, New York 10471


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