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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 6, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Quantum Rehabilitation and Nursing
63 Oakcrest Avenue
Middle Island, New York 11953

Paul Mullman, DSW
Quantum Rehabilitation and Nursing
63 Oakcrest Avenue
Middle Island, New York 11953

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

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

[REDACTED]

Appellant,

from a determination by

**Quantum Rehabilitation and Nursing Care
Center,**

Respondent,

to discharge her from a residential health care facility.

COPY

DECISION
AFTER
HEARING

Docket #DA24-6346

Hearing before: Eric J. Mantey
Administrative Law Judge
April 29, 2024
By WebEx Videoconference.

Parties: Quantum Rehabilitation and Nursing Care Center
63 Oakcrest Avenue
Middle Island, New York 11953
By: Paul Mullman, Director of Social Work
[REDACTED]
c/o Quantum Rehabilitation and Nursing Care Center
63 Oakcrest Avenue
Middle Island, New York 11953
By: *Pro Se*

JURISDICTION

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

A hearing was initially scheduled for April 24, 2024, but an adjournment was granted on request of the Appellant. The hearing was subsequently held on [REDACTED] 2024, in accordance with 10 NYCRR § 415.3; 42 CFR § 483.15; Part 51 of 10 NYCRR; and the New York State Administrative Procedure Act, via Webex videoconference. Five Respondent exhibits were accepted into the record, official notice of three previous Department hearing decisions was taken, and witnesses were examined. A digital recording of the hearing was made. (Length - 0:29:08.)

HEARING RECORD

ALJ Exhibits:

- I. Notice of Hearing and Notice of Discharge/Transfer

Respondent Exhibits:

- 1. Transfer/Discharge Notice
- 2. Billing Statements
- 3. Resident Fund Management Service Authorization Form
- 4. Resident Face Sheet
- 5. Progress Notes

Appellant Exhibits: None

Respondent Witnesses:

- 1. Paul Millman

Appellant's Witnesses:

- 1. [REDACTED]

ISSUES

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

FINDINGS OF FACT

1. Respondent 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 Middle Island, New York.

2. The Appellant was admitted to the facility on [REDACTED]; 2019, and as of [REDACTED], 2024, has an overdue balance owed to the facility in the amount of \$ [REDACTED] (Respondent Exhibits [Ex.] 4 and 2; Testimony [T]. Millman, 0:03:01.)

3. The Appellant and her [REDACTED], received monthly billing invoices from the Respondent. (Respondent Ex. 2; T. Appellant, 0:17:41.)

4. From [REDACTED] through [REDACTED] 2023, the Appellant was obligated to pay \$ [REDACTED] per month for her stay at the facility. Since [REDACTED] 2023 the Appellant's monthly charge has been \$ [REDACTED] (Respondent Ex. 2.)

5. From [REDACTED] 2023 through [REDACTED] 2024, the Appellant made only two monthly payments to the Respondent. (Respondent Ex. 2.)

6. 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, after reasonable and appropriate notice, to pay for her stay at its facility. The notice documented she owed the Respondent \$ [REDACTED] at the time it was issued. (ALJ Ex. I; Respondent Ex. 1 and 2.)

7. The discharge notice advised the Appellant that she would be discharged to [REDACTED] nursing home located in [REDACTED]. (ALJ Ex. I.; Respondent Ex. 1.)

8. The Appellant remains at the Respondent's 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,

(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 is necessary and that the discharge plan is appropriate. 10 NYCRR § 415.3(i)(2)(iii)(b). The post-discharge plan of care is to be developed “with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment and assure that needed medical and supportive service have been arranged and are available to meet the identified needs of the resident.” 10 NYCRR § 415.11(d)(3).

DISCUSSION

This is the third hearing in which the Appellant contests a Respondent decision to discharge her for failing, after reasonable and appropriate notice, to pay for her stay. In a hearing Decision and Order dated [REDACTED], 2020, the Respondent was authorized to discharge the Appellant on the grounds that she failed to pay her monthly bill. The Appellant’s medical condition subsequently changed, and the Appellant wanted to remain in Suffolk County, so the discharge was not implemented. (T. Millman, 0:04:08; 0:12:34 – 0:13:05.) In a hearing Decision and Order dated [REDACTED] 2023, the Respondent was again authorized to discharge the Appellant for failure to pay her monthly bill. The Appellant refused to move to the planned discharge location. (T. Millman, 0:04:22; 0:06:52.) The Respondent did not pursue legal action to enforce those orders.

The Appellant has continued to live at the facility and she, and her [REDACTED] on her behalf, has continued to receive billing notices. (Respondent Ex. 2.; T. Appellant,

0:17:41.) It is abundantly clear that she has long known of her financial obligation to the Respondent, but she still fails to pay her monthly bill. She did sign direct deposit authorizations on [REDACTED] 2023, and [REDACTED] 2024, allowing the Respondent to receive and apply her Social Security income to her monthly charge, but she then revoked them. (Respondent Ex. 3; T. Millman, 0:03:32 – 0:03:45; 0:08:31 – 0:08:42.)

She neither disputes the money she owes to the Respondent, nor her failure to pay the Respondent what she owes. Yet, she wants to remain in the Respondent's facility. (T. Appellant, 0:16:24.)

The Appellant has lived at the Respondent's facility for over five years and has friends there. (T. Appellant, 0:14:41 – 0:14:55.) She is slightly closer to her [REDACTED] at the Respondent's facility than she would be if she moved to another facility, although she does not see him much. (T. Appellant; 0:16:58 – 0:17:06.) These are understandable reasons to want to stay at the Respondent's facility, but the Appellant has a corresponding obligation to pay for the lodging, care, and meals she receives there. She now asks for a yet another chance to stay at the facility by beginning to pay her monthly bill. The Respondent is not willing to continue to accept her promises given her history of failing to follow through on them. (T. Millman, 0:23:34 – 0:23:54.)

The Respondent intends to discharge the Appellant to another nursing home, [REDACTED] [REDACTED], which provides a similar level of care. (ALJ Ex. I.) Neither the Respondent nor the Appellant allege that the Appellant is not in need of nursing home care or that [REDACTED] cannot meet her needs. The Appellant is familiar with that facility, she has visited it and likes it, and progress notes indicate that she took part in discharge planning to relocate there. (T. Appellant, 0:16:32 – 0:16:40;

T. Millman, 0:04:38 – 0:04:45; Respondent Ex. 5.) The Respondent has shown that the proposed discharge location is appropriate.

CONCLUSION

The Respondent met its burden, showing that: the Appellant received reasonable and appropriate notice of her financial obligation; she has failed to pay the monthly debt she owes to the facility; she participated in discharge planning; the proposed discharge location is appropriate.

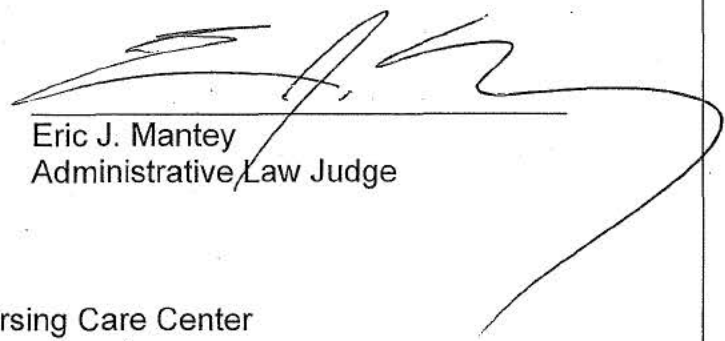
DECISION

The Respondent established that its determination to discharge the Appellant was correct, and that the discharge plan is appropriate.

1. The Respondent is authorized to discharge the Appellant.
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

May 6, 2024



Eric J. Mantey
Administrative Law Judge

To: Quantum Rehabilitation and Nursing Care Center
63 Oakcrest Avenue
Middle Island, New York 11953
Attn: Paul Mullman, Director of Social Work


c/o Quantum Rehabilitation and Nursing Care Center
63 Oakcrest Avenue
Middle Island, New York 11953