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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

June 3, 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.
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

Robert Ruffin, Ombudsman
51 Trenton Road
Fishkill, New York 12524

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 4.15.3, by

[REDACTED]

Appellant,

from a determination by

The Grand Rehabilitation and Nursing at River Valley,

Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

Hearing before: Kathleen Dix
Administrative Law Judge
May 7, 2024
By WebEx Videoconference

Parties: Elizabeth Sofield, Director of Social Work
The Grand Rehabilitation and Nursing at River Valley
140 Main Street
Poughkeepsie, New York 12601
By: Barbara Phair, Esq.

[REDACTED]
c/o The Grand Rehabilitation and Nursing at River Valley
140 Main Street
Poughkeepsie, New York 12601
By: Robert Ruffin, Ombudsman

JURISDICTION

By notice dated [REDACTED] 2024, The Grand Rehabilitation and Nursing at River Valley (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 May 7, 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. Evidence was received and witnesses were examined. A digital recording of the hearing was made. (1h 1m.)

HEARING RECORD

ALJ Exhibits:

1. Notice of Hearing

Respondent's Exhibits:

1. Statement of Financial Charges Dated [REDACTED], 2024 (1 page)
2. Social Services Progress Notes (5 pages)

Appellant's Exhibits:

None

Respondent's Witnesses:

1. Amit Saxena, M.D., Medical Director
2. Joelle Bowes, Assistant Director of Nursing
3. Tehila Tesser, Business Office
4. Gana Reichman, Prior Business Office
5. Estee Friedman, Medicaid Biller
6. Awa Cisse, Finance Coordinator
7. Elizabeth Sofield, Director of Social Work

Appellant's Witnesses:

1. [REDACTED] Appellant

Also present on May 7, 2024 hearing:

1. Robert Ruffin, Ombudsman

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 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 Poughkeepsie, New York.

2. The Appellant is an [REDACTED]-year-old woman who was admitted to the Facility on [REDACTED] 2023, from [REDACTED] for long term care. The Appellant suffers from various chronic medical conditions including [REDACTED].” (T. Saxena 10:55-11:16.)

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 had failed, after reasonable and appropriate notice, to pay (or to have paid under Medicare, Medicaid or private insurance) for her stay at the Facility. (ALJ Exhibit I.)

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

5. There is an outstanding balance due from the Appellant to the Respondent in the amount of \$ [REDACTED] as of [REDACTED] 2024. (Exhibit 1.)

6. The Appellant signed a Medicaid application on [REDACTED] 2024. (Recording @ 18:53.)

7. As of [REDACTED] 2024, the Facility became the Appellant’s Social Security representative payee and receives \$ [REDACTED] per month. (Recording @ 7:18.)

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 she had failed, after reasonable and appropriate notice, to pay (or to have paid under Medicare, Medicaid or private insurance) for her stay at the Facility. (ALJ Exhibit I.)

Awa Cisse, the Facility's finance coordinator, testified that she had spoken with the Appellant in [REDACTED] 2023, and with the Appellant's [REDACTED] regarding payment and the Medicaid application, and both the Appellant and her [REDACTED] referred her to Mr. [REDACTED], the Appellant's "[REDACTED]", to discuss the Appellant's financial obligations. Ms. Cisse stated that she was told that Mr. [REDACTED] was the Appellant's "power of attorney", and though requested, a copy of a written designation of Mr. [REDACTED] to act as the Appellant's power of attorney was not provided to the Facility. Ms. Cisse had difficulty contacting Mr. [REDACTED] but once she did, she sent him the Medicaid Application by email and regular mail to the address he provided; she did not receive a signed Medicaid application back from Mr. [REDACTED] (Recording @ 14:43-16:46, 7:08-17:16, 17:22-17:42; 20:46.)

Gana Reichman, previously worked for Future Care Consultants (FCC), the entity who does the billing on behalf of the Facility, where she prepared Medicaid applications and helped residents apply for Medicaid. Ms. Reichman testified that she had spoken with the Appellant in [REDACTED] of 2023 about payment and applying for Medicaid, and she was directed to reach out to Mr. [REDACTED]. Ms. Reichman also testified that she had difficulty contacting Mr. [REDACTED] but once she did on [REDACTED] 2023, she sent Mr. [REDACTED] forms for signature and requested information regarding the Appellant's Medicaid application. Despite following up with Mr. [REDACTED] more than once, Mr. [REDACTED] never responded to Ms. Reichman. (Recording @ 24:02, 28:32-29:15, 51:17, 51:41; 52:55.)

Tehila Tesser testified that she works for FCC, and that she took over the position from Ms. Reichman. Ms. Tesser stated that she had difficulty reaching Mr. [REDACTED] despite numerous phone calls and emails. Ms. Tesser approached the Appellant's [REDACTED] [REDACTED] who directed her back to Mr. [REDACTED]. Ms. Tesser finally spoke with Mr. [REDACTED] approximately 2 weeks prior to the hearing, after the discharge notice was issued in this

matter. The conversation was limited to the Appellant's Medicaid application which she had sent to Mr. [REDACTED] via email. Mr. [REDACTED] advised Ms. Tesser that he would sign the Medicaid application, but Ms. Tessler did not receive a signed Medicaid application from him. (Recording @ 24:19-25:21; 26:39-26:52, 27:13.)

Estee Friedman testified that she is the person who sends out the bills to the residents on behalf of the Facility. Ms. Friedman testified that bills for the Appellant were sent to her prior home address, that bills did not go out each and every month, and that she last sent a bill "a couple of months ago". In [REDACTED] 2024 she provided the Appellant with a copy of the bill at the Facility. (Recording @ 30:58-31:41, 33:44-34:44.) Mr. [REDACTED] has the same mailing address as the Appellant's previous residence. (Recording @ 35:10, 46:19.)

Elizabeth Sofield, the Facility's Director of Social Work, testified that she was asked to accompany Awa Cisse in [REDACTED] 2024, to speak with the Appellant in order to discuss payment and the Medicaid application. She too was directed to speak with Mr. [REDACTED]. Ms. Sofield spoke with Mr. [REDACTED] on or about [REDACTED] 2024. Mr. [REDACTED] advised her that he had sent back the Medicaid application to the Facility. The finance department advised Ms. Sofield that the Facility did not receive the Medicaid application back from Mr. [REDACTED]. (Recording @ 38:15-39:36, 43:47.)

Robert Ruffin, Ombudsman, advised that he first became aware of the Appellant's situation approximately 2 weeks prior to the hearing, after the Appellant had been given the discharge notice. The Appellant told Mr. Ruffin that she had been assured by her [REDACTED] and Mr. [REDACTED] that the billing for her stay at the Facility was being addressed. When the Appellant was advised of the outstanding financial obligation to the Facility and that the Medicaid application had not been signed by Mr. [REDACTED] she made every effort to address her financial obligation to the Facility, including signing the Medicaid application and making the Facility her representative payee for her Social Security payments. (Recording 7:18, 53:26-55:17.)

The Appellant testified on her own behalf. The Appellant stated that she understands the billing issue, but she has not spoken directly with Mr. [REDACTED] about the situation because Mr. [REDACTED] and her [REDACTED] do not speak to her. She communicates with Mr. [REDACTED] through her other [REDACTED]. The Appellant advised that Mr. [REDACTED] is in control of all her finances and has been so for approximately

12-13 years since her [REDACTED] died. The Appellant explained that her [REDACTED] had taken Mr. [REDACTED] in "when he had no place to go", that Mr. [REDACTED] did household repairs, and that he and her [REDACTED] took care of her [REDACTED]. When her [REDACTED] died, she made a new will, gave the house to her [REDACTED] - where Mr. [REDACTED] was also living - and Mr. [REDACTED] "got control of all the money". The Appellant stated that Mr. [REDACTED] puts his "working money" in with her money to pay the bills, and he takes care of her medical bills and medication costs. The Appellant explained that Mr. [REDACTED] is not really her [REDACTED] as he is not married to her [REDACTED] (Recording @ 56:08-58:28.)

Billing statements were sent to the Appellant's residence where Mr. [REDACTED] lives, and the first billing statement sent to the Appellant's residence was in [REDACTED] 2023, approximately 8 months after the Appellant was admitted to the Facility. (Recording @ 35:10, 46:19, 52:34.) This record shows, however, that the Appellant herself was not directly given a billing statement until [REDACTED] 2024, approximately 1 year after being admitted to the Facility. It is true that the Appellant deferred to Mr. [REDACTED] when approached by the Facility's staff to discuss her financial obligations, which the record shows was first done by individual Facility staff in [REDACTED] of 2023, and at which time Facility staff also began contacting Mr. [REDACTED]. It is also true that Mr. [REDACTED] was recalcitrant in responding to any of the contacts made by the Facility staff and it is unfortunate that Mr. [REDACTED] did not act in the Appellant's best interest in this regard. At some point, however, the five or so Facility staff who were aware of Mr. [REDACTED] recalcitrance should have recognized that the Appellant's reliance on Mr. [REDACTED] was ill advised and perhaps could have taken more assertive steps to make the Appellant aware of the situation. If this had been done, then perhaps the Appellant would not be in the situation that she is in now owing \$[REDACTED] in back charges to the Facility.

As of [REDACTED] 2024, the Facility became the Appellant's Social Security representative payee, and it receives \$[REDACTED] per month toward her care. (Recording @ 7:18). The Appellant signed a Medicaid application on her own behalf on [REDACTED] 2024 (but was unable to complete the accompanying questionnaire as she did not possess the necessary financial documentation to do so). If approved, Medicaid will cover the Appellant's stay going back 3 months from the date of the application, and then also going forward. (Recording @ 18:48; 19:11-19:30, 19:47; 20:08; 20:59.) However, despite the Appellant's recent good faith payment efforts, there will still be an

outstanding balance owed to the Facility even if Medicaid is approved because Medicaid only covers three months retrospectively from the date of the application and the Appellant owes for over 12 months of her stay.

Despite the laxness with which the Respondent pursued obtaining payment for the Appellant's stay, the Respondent has shown that it has provided reasonable and appropriate notice to the Appellant of the amounts due, and that the Appellant had failed to pay for her stay. Thus, the Respondent has met its burden of establishing valid grounds for discharge and the discharge of the Appellant for nonpayment is permissible. 10 NYCRR Section 415.3(h)(1)(i)(b).

The Appellant is reminded that she may revoke a power of attorney at any time, and perhaps should consider doing so with regard to Mr. [REDACTED]. Further, the Appellant or the Facility on her behalf, should know that they may contact the Dutchess County Department of Community and Family Services Adult Protective Services at 845-486-3300 to report and/or request an investigation if either suspects elder financial exploitation of the Appellant. <https://www.dutchessny.gov/Departments/Community-Family-Services/Community-and-Family-Services.htm>.

Discharge Plan

Joelle Bowes, the Assistant Director of Nursing for the Facility testified that the Appellant continues to need nursing home care. Dr. Amit Saxena testified that he is the Medical Director of the Facility, has reviewed the Appellant's case, and opined that the Appellant needs assistance with medical care, medications, and activities of daily living, and needs monitoring. Dr. Saxena also opined that discharge to [REDACTED], a skilled nursing facility, is a safe discharge plan for the Appellant. [REDACTED] is an associated entity to the Facility. (Recording @ 10:29; 10:46, 11:16-11:29, 11:39-11:46, 13:36, 42:50.)

The Appellant objects to the Respondent's discharge plan to refer her to [REDACTED] because of its distance away from her family. The discharge location is in [REDACTED] New York, approximately [REDACTED] miles, or a [REDACTED]-hour drive from the Appellant's family and the from where she is now. The Appellant's [REDACTED] [REDACTED] currently visits her, quite often. The Appellant expressed

concern that if she is sent to [REDACTED] New York, she will never see her [REDACTED] again and she "couldn't live with that". Mr. Ruffin asserted that it is illogical to move the Appellant to [REDACTED] due to her "back bill issues" since both facilities are owned by the same company. (Recording @ 41:03, 45:55; 53:39, 55:21, 55:37-56:02, 58:31.)

No evidence was presented that the Appellant's care team or discharge planner developed a discharge plan with the participation of the Appellant and her family, or that the Appellant was provided "sufficient preparation and orientation . . . to ensure safe and orderly transfer or discharge from the facility . . ." as is required by PHL § 2803-z, 10 NYCRR 415.3(i), and 10 NYCRR § 415.11(d). In fact, Ms. Sofield testified that the Appellant's discharge notice was "filled out by the administrator" though she issued it. (Recording @ 40:12.) Ms. Sofield testified that she sent referrals to numerous facilities in the [REDACTED] area, and to the [REDACTED] at the request of the Appellant's [REDACTED], and that the Appellant was not accepted to those facilities. It is noted that none of those facilities to which referrals were sent, other than [REDACTED], were associated with the Respondent. (Recording @ 41:03-41:45, 48:11.) There are at least 7 nursing home facilities associated with the Respondent located between [REDACTED] and [REDACTED] New York, and at least 6 more associated nursing homes in close in proximity around [REDACTED] New York. The Respondent did not send referrals to any of their associated facilities closer in proximity to itself, and therefore, closer to the Appellant's family. It can only be assumed that a discharge of the Appellant to one of its furthest facilities from [REDACTED] New York was either a dramatic way to provoke Mr. [REDACTED] the Appellant, and / or her [REDACTED] to act on the Appellant's financial obligation to the Respondent, or was done for a retaliatory purpose. It is apparently, then, the decision of the administrator to put this frail and aged resident in a location that is virtually inaccessible to her only family member that visits her, despite the Appellant's recent good faith efforts to meet her financial obligation to it.

While the proposed discharge location is another skilled nursing facility, which could ostensibly meet the Appellant's medical needs, given the Facility's lack of discharge planning with the Appellant, its deferment in issuing the discharge notice, and its remissness in not referring the Appellant to one of its closer in proximity facilities, the distance from the Appellant's family to the discharge location, the Appellant's objection

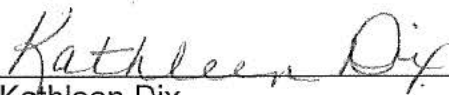
to the discharge location and her recent cooperation with resolving the payment and Medicaid application issues, and the fact that transferring the Appellant to a related facility will not alleviate the past due outstanding bill balance owed to its company, it cannot be found that the Respondent has developed an appropriate post-discharge plan of care for the Appellant as required by 10 NYCRR 415.3(i)(1)(vi).

DECISION

The Grand Rehabilitation and Nursing at River Valley has established that the discharge of the Appellant was necessary but has not established that the discharge plan was appropriate.

1. The Grand Rehabilitation and Nursing at River Valley is not authorized to discharge the Appellant 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
June 3, 2024


Kathleen Dix
Administrative Law Judge

To: Elizabeth Sofield, Director of Social Work
The Grand Rehabilitation and Nursing at River Valley
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Poughkeepsie, New York 12601
esofield@thegrandhealthcare.com

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