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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

August 29, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Rochester Community Nursing & Rehab
989 Blossom Road
Rochester, New York 14610

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

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]

Appellant,

from a determination by

**Rochester Community Nursing and
Rehabilitation Center,**

Respondent,

to discharge him from a residential health care facility.

DECISION
AFTER
HEARING

#DA24-6418

Hearing before: Eric J. Mantey
Administrative Law Judge
August 16, 2024
By WebEx Videoconference

Parties: Rochester Community Nursing and Rehabilitation Center
989 Blossom Road
Rochester, New York 14610

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

[REDACTED]

c/o Rochester Community Nursing and Rehabilitation
Center
989 Blossom Road
Rochester, New York 14610

By: *pro se*

JURISDICTION

By notice dated [REDACTED], 2024, Rochester Community Nursing and Rehabilitation 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).

The hearing was held in accordance with 10 NYCRR § 415.3, 42 CFR § 483.15, 10 NYCRR Part 51, and New York State Administrative Procedure Act §301(1) via Webex videoconference. The Appellant appeared along with Ombudsman Diana Leach, who assisted him with accessing technology for the hearing. A digital recording of the hearing was made. (Length – 00:56:41.)

HEARING RECORD

ALJ Exhibits:

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

Respondent Exhibits:

1. Net Available Monthly Income Determination
2. Billing Statement
3. Progress Notes

Appellant Exhibits: None

Respondent Witnesses:

1. Samontra Spencer, Administrator
2. Gloria Strader, Nurse Practitioner
3. Kristy Solis, Director of Nursing
4. Stephanie Herman, Director of Social Work
5. Esther Feldman, Business Office Manager

Appellant's Witnesses:

1. [REDACTED]

ISSUES

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

FINDINGS OF FACT

1. The Appellant was admitted to the Respondent on [REDACTED] 2021. (Respondent Exhibit [Ex.] 3.)

2. The Appellant is responsible for paying a monthly charge for his care based upon his "net available monthly income" (NAMI). His NAMI charge is \$ [REDACTED] per month as of [REDACTED] 2022. The Appellant's last full monthly payment to the Respondent was on [REDACTED], 2022. Since that time, he only made one partial payment on [REDACTED], 2024. As of [REDACTED] 2024, his overdue balance owed to the Respondent is \$ [REDACTED] (Testimony [T.], Feldman, 00:42:06; Ex. 1 and 2.)

3. The Respondent sent monthly billing statements to the Appellant at the nursing home. (T., Feldman, 00:43:57.)

4. By notice dated [REDACTED], 2024, the Respondent informed the Appellant that he will be discharged on [REDACTED], 2024, to [REDACTED]), a nursing home located in [REDACTED] New York because he has failed, after reasonable and appropriate notice, to pay for his stay at the facility. (ALJ Ex. I.)

5. The Appellant remains at the Respondent 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).

DISCUSSION

The Appellant made an initial payment to the Respondent on [REDACTED], 2021, and has made 12 more monthly payments, but his payments have not kept up with his

monthly charges. (Ex. 2.) His unpaid balance is \$ [REDACTED] (Ex. 2.) In addition to sending monthly invoices to the Appellant, the Respondent's business office manager Feldman testified that she called the Appellant to discuss payment, and that a former employee went to his room multiple times to discuss his monthly financial obligation, but he continued to refuse paying his monthly charge. (T., Feldman, 00:43:57 – 00:44:47 and 00:46:14.)

The Appellant admits that he stopped paying the Respondent. (T., Appellant, 00:50:20 – 00:50:41.) He believes he does not have to pay anything because he no longer receives physical therapy. (T., Appellant, 00:50:20 – 00:50:49.) His disagreement with a Respondent determination that he no longer needs physical therapy does not relieve him from his obligation to pay for his care. His charges are not otherwise in dispute. He admits that he has money, stating, "I can buy my own food . . . and pay for shelter." (T., [REDACTED] 00:51:51.) He received bills monthly, and the Respondent had verbal conversations with him about payment. These facts demonstrate he has been provided with reasonable and appropriate notice to pay. Despite the Respondent's attempts at collecting payment and despite his available income, he continues refusing to pay his monthly bill.

Progress notes show that the Respondent engaged the Appellant in the discharge planning process while they reached out to multiple alternate facilities in which he is suitable to reside. (Ex. 3.) Although the Appellant challenged his discharge, he now states he wants to move out of the Respondent. (T., Appellant, 00:52:06 and 00:54:03.) The proposed discharge location, like the Respondent, is a nursing home, however it is located on [REDACTED].

The Respondent made efforts to arrange discharge to a mix of facilities in the [REDACTED] area; to nursing homes, as well as to assisted living and independent living locations since the Appellant expressed a desire to move to alternative settings. The Respondent made three referrals to other nursing homes; one declined and the other two have yet to respond. (T., Spencer, 00:24:49.) The Appellant refused an offer to reside at [REDACTED], which is an adult home in [REDACTED] (T. Spencer, 00:25:09.) The Respondent asked [REDACTED] to return and reassess the Appellant; however, he declined a new assessment on the grounds that he was arranging for his own apartment in the community. (T., Spencer, 00:25:27.) The Appellant did not provide details, such as contact information, an address, or details about a leasing office, to the Respondent. (T., Spencer, 00:26:06.) As he had expressed a desire to return to live in the community, he was also referred to at least two rooming houses to which he refused to go. (T., Spencer, 00:24:25.)

The Respondent has complied with its obligation under 10 NYCRR 415.3i(1)(vii), to permit the Appellant the opportunity to participate in deciding where he will reside after discharge. While the Respondent disfavors moving to [REDACTED] because of its distance from the Respondent, the Respondent has explored, and afforded him assistance and the opportunity to explore, more local options. (R. Ex. 3.) An adult home in [REDACTED] New York, which is closer to the Respondent, rejected his referral and other options for alternative housing have been explored without success. (R. Ex. 3.)

The Appellant rejected multiple offers of alternative placement that were secured by the Respondent in the local area. (R. Ex. 3.) The Appellant has not given good reasons for rejecting the offers other than that he wants some other

arrangements that he has failed to make. (R. Ex. 3.) The Appellant testified that he talked again with a representative of [REDACTED] on the day of this hearing with whom he planned to meet on that same day. (T. Appellant, 00:52:03.) He stated he would, “. . . probably move there . . .” (T. Appellant, 00:52:11, 00:54:32 – 00:54:49.) This reflects a change to his previous decision refusing another assessment by [REDACTED]. As noted above, he previously declined [REDACTED] as a housing option.

If the Appellant is now interested in pursuing a discharge plan to [REDACTED] he is entitled to do so and the Respondent should be willing to assist him. But the Respondent, having already secured that option for him once and had him refuse it, is at this point entitled to proceed with the discharge plan it has in place without further extensive delay. Gloria Strader, Nurse Practitioner; Kristy Solis, Director of Nursing; Samontra Spencer, Administrator; and Stephanie Herman, Director of Social Work, affirm that the planned discharge location is safe and appropriate. (T. Strader, 00:12:18; T. Solis, 00:19:15 and 00:19:22; T. Spencer, 28:15; and T. Herman, 00:37:49.)

The Appellant and the Respondent engaged with each other throughout the discharge planning process. Another nursing home is willing to accept the Appellant. He states that he wants to move, but he dislikes the discharge location; however, he has either declined, or been rejected from other housing options, and he remains uncertain about moving to the one remaining housing location in the [REDACTED] area. The discharge plan is appropriate.

CONCLUSION


The Respondent met its burden of showing that the Appellant received reasonable and appropriate notice of his financial obligation; that he has failed to pay his monthly charges; and that the proposed discharge location is appropriate for the Appellant's needs.

DECISION

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


1. The Respondent is authorized to discharge the Appellant in accordance with its [REDACTED], 2024, notice of discharge.
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
August 29, 2024


Eric J. Mantey
Administrative Law Judge

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