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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

September 30, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Triboro Center
1160 Teller Avenue
Bronx, New York 10456

Shragi Goldberg, Administrator
Triboro Center
1160 Teller Avenue
Bronx, New York 10456

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

██████████ ██████████

Appellant,

from a determination by

Triboro Center

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION

#DA24-6448

Hearing Before: Natalie J. Bordeaux
 Administrative Law Judge

Hearing Location: Cisco Webex videoconference

Hearing Date: September 27, 2024

Parties: Triboro Center
 1160 Teller Avenue
 Bronx, New York 10456
By: Shragi Goldberg, Administrator

██████████ ██████████
Pro Se

2. On ██████, 2022, after returning to the Facility from a brief hospital admission, the Appellant signed an admission agreement wherein he agreed to “pay, or arrange for payment of, any portion or all...coinsurance including the monthly income contribution (NAMI) budgeted by the Medicaid program.” (Exhibit 6; Recording @ 22:20, 26:54.)

3. In ██████ 2023, the Appellant was determined by the New York City Department of Social Services or Human Resources Administration (HRA) to owe a NAMI, otherwise known as “net available monthly income”, to the Facility of \$█████ toward the cost of his nursing home stay. He paid \$█████ towards the ██████ 2023 NAMI. (Recording @ 13:47, 24:50.)

4. From ██████ 2023 through ██████ 2024, the HRA determined that the Appellant’s NAMI obligation was \$█████ (Recording @ 25:25.)

5. In ██████ 2024, the HRA informed the Facility that the Appellant’s Medicaid coverage was adjusted retroactively to ██████ 2024 to include a NAMI of \$█████ toward the cost of the Appellant’s nursing home stay. (Exhibit 5.)

6. Upon receiving HRA’s ██████ 2024 notification regarding the Appellant’s retroactively adjusted NAMI, the Facility’s Finance Coordinator, Orly Feder, and Facility Social Worker Jason Biggs, attempted to discuss the balance owed with the Appellant on four separate occasions, but the Appellant rebuffed their attempts. (Recording @ 11:46, 18:20.)

7. By notice dated ██████, 2024, the Facility advised the Appellant of its determination to discharge him on ██████, 2020 because he has failed, after reasonable and appropriate notice, to pay for his stay at the Facility. (Exhibit 1.)

8. As of ██████, 2024, the Appellant had an outstanding balance of \$█████ for unpaid NAMI to the Facility. (Exhibit 4.)

9. The Appellant remains at the Facility pending the outcome of this appeal.

APPLICABLE LAW

A residential health care facility (also referred to in the 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).

Regulations at 10 NYCRR § 415.3(i) describe the transfer and discharge rights of residential health care facility residents. They state, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(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... 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.

The residential health care facility must prove that the discharge was necessary, and the discharge plan was appropriate. 10 NYCRR § 415.3(i)(2)(iii)(c); State Administrative Procedure Act § 306(1).

DISCUSSION

The Facility 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.) The amount owed by the Appellant is his NAMI, a required monthly

contribution toward the cost of his stay as a Medicaid enrollee with nursing home or chronic care coverage, which continues to accrue. In ██████████ 2022, the Appellant signed an admission agreement, in which he agreed to pay the NAMI, and made some effort to pay his first monthly obligation in ██████████ 2023, with a \$██████ credit card payment. (Recording @ 24:50, 26:54.) For reasons unknown, the HRA subsequently removed the Appellant's NAMI from ██████████ 2023 through ██████████ 2024. In ██████████ 2024, when the HRA determined to retroactively reinstate the Appellant's NAMI to ██████████ 2024, Ms. Feder and Mr. Biggs presented the Appellant with an invoice detailing the amount owed to the Facility and the option of a payment plan to address the balance and ensure that future payments would be automatically sent to the Facility. The Appellant refused. (Recording @ 10:17, 18:20.)

At the hearing, the Appellant insisted that he has no financial obligation to the Facility. He is unwilling to pay his NAMI obligation because the Facility has not provided necessary care. (Recording @ 36:35) The NAMI obligation is non-negotiable, and is a condition of the Appellant's ability to continue receiving care (regardless of his opinion of the care quality) at the Facility. The Facility has established that the Appellant has failed, after reasonable and appropriate notice, to pay for the cost of his stay.

The Appellant also contested the Facility's proposal to discharge him to ██████████, a residential health care facility/nursing home located in ██████████ New York. He asserted that he wants to return home, but just needs additional physical therapy to assist with navigating the stairs in his home. (Recording @ 40:08.) The Appellant does not want to be transferred to a nursing home in ██████████ New York because it would be too hard for his family to visit, and the distance would contribute to his existing stress. (Recording @ 37:54.)

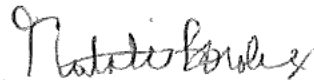
It is undisputed that the Appellant continues to require the care of a nursing home. Samantha Golembo, the Facility's Director of Social Services, explained that she had first attempted to identify a nursing home within or closer to the [REDACTED] that would be willing to accept the Appellant. However, given the Appellant's outstanding NAMI as the basis for transfer, many nursing homes were unwilling to consider the Appellant's transfer. Ms. Golembo located [REDACTED], a nursing home providing comparable services which the Appellant needs. (Recording @ 32:18.) The Appellant has not proposed safe alternatives. (Recording @ 35:13.)

The proposed discharge plan addresses the Appellant's medical needs and how those needs will be met after discharge. The Facility has established that its discharge plan is appropriate.

DECISION

1. Triboro Center has established that its determination to discharge the Appellant is permissible pursuant to 10 NYCRR § 415.3(i)(1)(i)(b) and that its discharge plan is appropriate.
2. Triboro Center is authorized to discharge the Appellant pursuant to its [REDACTED] 2024 notice.

Dated: September 30, 2024
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge