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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

October 18, 2024

**CERTIFIED MAIL/RETURN RECEIPT**



Jessica Hitchcock, NHA  
Warren Center for Rehab & Nursing  
42 Gurney Lane  
Queensbury, New York 12804

Allison Johannessen  
Mary Keniry  
Long Term Care Ombudsman Program  
Catholic Charities Tri-County Services  
1462 Erie Boulevard, 2<sup>nd</sup> Floor  
Schenectady, New York 12305

**RE: In the Matter of [REDACTED] [REDACTED] – 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

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

[REDACTED]

Appellant,

from a determination by

WARREN CENTER,

Respondent,

to discharge him from a residential health care facility.

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Before: Tina M. Champion  
Administrative Law Judge

Held at: Videoconference via WebEx

Date: October 11, 2024

Parties:

[REDACTED]

By: Pro se

Warren Center  
42 Gurney Lane  
Queensbury, NY 12804

By: Jessica Hitchcock, NHA

COPY

DECISION

**JURISDICTION**

By notice dated [REDACTED], 2024, Warren Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) 415.3(i).

Evidence was received and witnesses were examined. A digital recording was made of the proceeding. (1:42:57 in duration.)

**HEARING RECORD**

ALJ Exhibits: I – Letter with Notice of Hearing and Transfer/Discharge Notice [REDACTED]/24)  
II – Letter with Notice of New Hearing Date ([REDACTED]/24)

Facility Exhibits: 1 – Admission Record  
2 – Rate Report  
3 – Billing Statement  
5 – Progress Note  
7 – BIMS  
8 – Kardex Report  
9 – Progress Notes  
10 – Progress Notes  
11 – PT Discharge Summary  
12 – Progress Notes  
13 – Progress Notes  
14 – DSS NAMI Determination Letter

Appellant Exhibits: None

Facility Witnesses: Crystal Girard, Business Office Manager  
Jessica Hitchcock, Nursing Home Administrator  
Danielle Moore, Assistant Director of Nursing

Appellant Witnesses: [REDACTED] [REDACTED] Appellant

Ombudsman Present: Allison Johannessen  
Mary Keniry

### FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was initially admitted to the Facility on [REDACTED] 2021. (Exhibit [Ex.] 1.)
2. The Appellant has capacity to make his own decisions and is independent, alert and oriented. (Ex. 7.)
3. The Appellant is independent in his activities of daily living (ADLs). He frequently refuses assistance offered by Facility staff. (Exs. 8-10; Testimony [T.] Moore.)
4. The Appellant was discharged from physical therapy (PT) on [REDACTED], 2024, upon his highest practical level being achieved. (Ex. 11.)
5. The Appellant has [REDACTED] that require skilled nursing care, yet he frequently refuses care and refuses to allow providers to assess the wounds to determine whether his treatment plan needs revision. (Exs. 9, 10, 13; T. Moore.)
6. The Appellant's wounds can be managed in the community through the [REDACTED] Hospital [REDACTED] or a visiting nurse. (T. Moore, Appellant.)
7. The Appellant has recently experienced an exacerbation of his [REDACTED]. He was seen by a medical provider for this condition on [REDACTED] 2024, and was prescribed a [REDACTED] and antibiotics for treatment. (T. Moore.)
8. The Appellant fell from his wheelchair in the Facility on [REDACTED], 2024. The Appellant had previously applied [REDACTED] to the brakes of his wheelchair. He refused to be assessed after falling and attributes his fall to his wheelchair and not to any medical condition. (T. Moore, Appellant; Ex. 13.)<sup>1</sup>

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<sup>1</sup> Ms. Moore testified that the fall occurred on [REDACTED] 2024. A progress note references the fall occurring on [REDACTED] 2024. (Ex. 13.)

9. The Department of Social Services (DSS) has determined that the Appellant is responsible for a net available monthly income (NAMI) of \$ [REDACTED] per month from [REDACTED], 2024, through [REDACTED] 2024. The Appellant previously had no required contribution. (Ex. 14; T. Girard.)

10. The DSS NAMI determination letter is dated [REDACTED] 2023, and is addressed to the Appellant in care of the Facility. The Facility claims it provided the letter to the Appellant in [REDACTED] 2023 due to chaos in the business office resulting from employee turnover. The Appellant claims he was provided the letter in [REDACTED] 2024. (T. Girard, Appellant.)

11. The Facility met with the Appellant in [REDACTED] 2024 for the purpose of discussing collecting the Appellant's NAMI. The Facility initially determined to forgo collecting the Appellant's NAMI from [REDACTED] through [REDACTED] 2024. The Appellant thereafter made his required NAMI payment for the months of [REDACTED] and [REDACTED]. The Appellant has not made any further payments. (Ex. 3; T. Girard.)

12. The Facility has hand-delivered monthly statements to the Appellant. The last statement provided to the Appellant is dated [REDACTED], 2024, and reflects a balance of \$ [REDACTED] the NAMI owed by Appellant from [REDACTED] through [REDACTED], and [REDACTED] 2024. (Ex. 3; T. Girard.)

13. On [REDACTED], 2024, the Facility issued a Transfer/Discharge Notice to the Appellant, proposing discharge to a hotel, [REDACTED], New York, on [REDACTED], 2024. (ALJ Ex. I.)

14. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant has failed to pay for his stay at the Facility. (ALJ Ex. I.)

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

16. 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's 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's Rules and Regulations. (10 NYCRR 415.3[i][1].)

Pursuant to 10 NYCRR 415.3(i)(1)(i)(b), a resident may be discharged when:

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

Crystal Girard, Business Office Manager, testified that the Appellant had a \$ [REDACTED] contribution for his stay at the Facility since his initial admission on [REDACTED] 2021 until [REDACTED], 2024, when his NAMI became \$ [REDACTED] per month after his classification changed from short term care to long term care. Ms. Girard testified that the Facility has not been notified by DSS of any pending appeal or fair hearing request relating to the NAMI determination, and that the Facility is typically notified of such appeals by DSS. Ms. Girard further testified that as of [REDACTED] 2024, the Appellant owed the Facility \$ [REDACTED]. Her testimony is supported by documentary evidence of a [REDACTED] 2024 statement and the DSS determination letter. (Exs. 3, 14.)

The Appellant alleges that the Facility untimely provided him the [REDACTED] 2023, DSS determination letter in [REDACTED] 2024, and that the Facility improperly opened the determination letter that was addressed to "[REDACTED] [REDACTED] C/O WARREN CENTER REHAB." The Appellant testified that he has an appeal pending regarding the NAMI determination and testified that he recently spoke with someone at DSS who confirmed his request for a fair hearing. The Appellant, in response to a direct question by ALJ Champion, stated that he is not disputing the NAMI calculation and that he only disputes being provided the DSS determination letter by the Facility in an untimely manner and the Facility opening the determination letter. (Recording @ 1:10:40.) The Appellant further stated that "it's never been about the money, it's been about how you're treated." (Recording @ 1:11:35.)

The Appellant provided no direct explanation for why he has not paid his NAMI. He did not dispute testimony by Jessica Hitchcock, Nursing Home Administrator, that he has been making various payments, such as electricity to maintain power to a freezer to his home in the community, registration on a car that sits on the lot where the home is, and possibly taxes on the

home. Further, the Appellant testified that he pays cell phone and credit card bills. (Recording @ 1:25:27.) While the Appellant may desire to pay other expenses with his income and may have complaints as to the way mail was handled at the Facility, it does not negate his responsibility to pay his NAMI to the Facility. The Appellant has not shown credible evidence of a pending appeal on his NAMI determination by DSS and has, in fact, stated that he does not dispute the calculation. The Facility has shown that it has provided reasonable and appropriate notice to the Appellant that his NAMI is due and owing and the Appellant has failed to pay for his stay. Therefore, discharge for nonpayment is permissible.

#### Discharge Location

The Facility has proposed discharge to [REDACTED], a hotel in [REDACTED] New York. Danielle Moore, Assistant Director of Nursing and previous Nurse Manager, testified that the Appellant's [REDACTED] was recently exacerbated and that he has received treatment in the form of a [REDACTED] and antibiotics from a medical provider. Ms. Moore testified that the Appellant has refused to allow multiple providers to examine his wounds, refused referrals to a wound care center, and allows only certain staff on the night shift to perform wound care at times. Ms. Moore testified that the Appellant handles all his ADLs without assistance from staff because he will not allow anyone to assist him or be in the room with him when he is performing care such as toileting. Her testimony is supported by documentary evidence including a Kardex report, various progress notes and a PT discharge summary. (Exs. 8-13.)

The Facility's doctor, Jonathan Waldman, authored a progress note which references the Appellant's refusals for skilled nursing wound care and assistance with ADLs. Dr. Waldman noted reviewing the Appellant's chart and concluded that "it would be entirely safe and reasonable for [REDACTED] to be discharged to community living. And in fact it would be overall in his best interest for hopefully attaining many years of a productive and happy life." (Ex. 9.) Although the progress

note by Dr. Waldman predates the exacerbation of the Appellant's [REDACTED] the Appellant has received treatment for that exacerbation.

The Appellant disputes the discharge location, stating that he cannot go out into the community on his own due to his health care needs. However, the Appellant testified that he has been trying to secure an independent living apartment in the community at [REDACTED] for a couple of years and that he believes one may be available for him in [REDACTED]. The Appellant expressed an unequivocal desire to be discharged to that independent living apartment. Regarding his wounds, the Appellant testified that he is aware that medical professionals have advised that they could be maintained with once weekly care by utilizing [REDACTED] rather than daily wound dressings, but that he has declined such treatment. (Recording @ 1:32:04.) The Appellant also testified that he could obtain nursing assistance with wound care in the community through a county nurse or by paying for a nurse. (1:27:03.)


The Appellant's argument that the community is currently not a safe discharge location for him is unpersuasive based on the Facility's documentation and testimony, and particularly considering the Appellant's persistent refusals for assistance with any ADLs by the Facility. While the Appellant has skilled nursing needs for his wound care, the totality of evidence supports that such wound care can be managed in the community. There is no evidence indicating any certainty to the Appellant obtaining an apartment at [REDACTED] in the very near future. While the hotel proposed as the discharge location is likely not a financially sustainable long-term option for the Appellant, the Facility has met its burden to show that it is a safe and appropriate discharge location.

**DECISION**

Warren Center has established that its determination to discharge the Appellant is permissible, and that its discharge location is appropriate.

1. The Appellant may be discharged in accordance with the [REDACTED], 2024, Transfer/Discharge Notice.
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  
October 18, 2024

  
Tina M. Champion  
Administrative Law Judge

TO: [REDACTED]

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