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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 17, 2024

**CERTIFIED MAIL/RETURN RECEIPT**

██████████ ██████████  
c/o The New Jewish Home, Sarah Neuman  
845 Palmer Avenue  
Mamaroneck, New York 10543

Cristina Giarratano, DSW  
The New Jewish Home, Sarah Neuman  
845 Palmer Avenue  
Mamaroneck, New York 10543

Jason B. Atlas, Esq.  
Schwartz Sladkus Reich Greenberg Atlas LLP  
444 Madison Avenue  
New York, New York 10022

**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

**The New Jewish Home, Sarah Neuman**

Respondent,

to discharge her from a residential  
health care facility.

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**DECISION**

#DA24-6457

Hearing Before: Natalie J. Bordeaux  
Administrative Law Judge

Hearing Location: Cisco Webex videoconference

Hearing Dates: October 10 and 15, 2024

Parties: The New Jewish Home, Sarah Neuman  
845 Palmer Avenue  
Mamaroneck, New York 10543-2406  
By: Jason B. Atlas, Esq.  
Schwartz Sladkus Reich Greenberg Atlas LLP  
444 Madison Avenue  
New York, New York 10022

██████████  
*Pro se*

**JURISDICTION**

By notice dated ██████████, 2024, The New Jewish Home, Sarah Neuman (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge ██████████ ██████████ (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

**HEARING RECORD**

Facility witnesses: Cristina Giarratano, Director of Social Work  
Angie Singh, Senior Billing Coordinator

Facility exhibits: A – The New Jewish Home’s initial submission to the Department’s Residential Support Division  
B – Referral packet to ██████████  
██████████  
C – Current Progress Notes  
D – Net available monthly income invoices  
E – Medicaid budgeting invoices

Appellant witnesses: ██████████ ██████████ Appellant  
██████████ Appellant’s ██████████

Appellant exhibits: None

The Notice of Hearing and accompanying cover letter were entered into evidence as ALJ Exhibit I. A digital recording of the hearing was made. (8:01 in duration on October 10, 2024 and 1:16:31 in duration on October 15, 2024.)<sup>1</sup>

**ISSUES**

Has The New Jewish Home, Sarah Neuman established that its determination to discharge the Appellant was permissible pursuant to 10 NYCRR § 415.3(i)(1)(i)(b) and that the discharge plan is appropriate?

<sup>1</sup>Citations in this decision are to the October 15 recording.

**FINDINGS OF FACT**

1. The Appellant is a █-year-old woman who was admitted to the Facility on █  
█ 2021 after hospitalization. She has been diagnosed with █  
█  
█ (Exhibit A.)
2. By notice dated █, 2021, the New York City Department of Social Services Human Resources Administration (HRA) advised the Facility and the Appellant that, effective █ 2021, the Appellant would owe a NAMI, otherwise known as “net available monthly income”, to the Facility of \$ █ each month toward the cost of her nursing home stay. That amount was based on the Appellant’s monthly receipt of Social Security income and pension benefits minus deductions for her Medicare premiums and a \$ █ personal needs allowance. Senior Billing Coordinator Angie Singh explained the monthly financial obligation to the Appellant, who initially agreed to have her monthly Social Security benefits sent directly to the Facility. (Exhibit E; Recording @ 23:56, 30:04.)
3. In █ 2021, the Facility received the Appellant’s Social Security payment of \$ █ directly from the Social Security Administration (SSA). However, the Appellant did not remit the remaining NAMI owed of \$ █ for that month. (Exhibit D.)
4. After the SSA transferred the Appellant’s █ 2021 benefits to the Facility, the Appellant advised the SSA that she no longer wanted her benefits sent to the Facility. (Recording @ 24:16, 29:58.)
5. Facility staff, including Ms. Singh, have repeatedly attempted to discuss the Appellant’s NAMI obligation with her, but the Appellant has asked staff to instead discuss her finances with various family members, including her █ (Recording @ 26:17.)

6. At the Appellant's request, the Facility has sent monthly invoices of the Appellant's NAMI obligation to the Appellant's ██████ Facility staff have also continued delivering invoices to the Appellant's room. (Exhibit D; Recording @ 26:32.)
7. The Appellant has made no other payments to the Facility toward her NAMI obligation. (Exhibit D.)
8. By notice dated ██████ 2024, the Facility advised the Appellant of its determination to discharge her on ██████, 2024 because she has failed, after reasonable and appropriate notice, to pay for her stay at the Facility. The notice proposes to discharge the Appellant to ██████ a nursing home located in ██████. (Exhibit A.)
9. As of ██████ 2024, the Appellant owes the Facility \$██████ for unpaid NAMI. (Exhibit D.)
10. 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 nursing home 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:

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(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 is appropriate. 10 NYCRR § 415.3(i)(2)(iii)(c); State Administrative Procedure Act § 306(1).

#### DISCUSSION

The Facility determined to discharge the Appellant, effective [REDACTED], 2024, on the grounds that she “has failed, after reasonable and appropriate notice, to pay for... a stay at the facility.” (Exhibit A.) The amount owed by the Appellant is her NAMI, a required monthly contribution toward the cost of her stay as a Medicaid enrollee with nursing home or chronic care coverage, which continues to accrue. (Exhibit D.) In September 2021, the Appellant was informed by Ms. Singh that she would be obligated to pay a NAMI of \$ [REDACTED] beginning in [REDACTED] 2021. (Exhibit E.) Although initially receptive to paying at least a portion of her NAMI, the Appellant quickly changed her mind so that by [REDACTED] 2021 and continuing thereafter, no further payments were remitted by or on behalf of the Appellant. (Recording @ 23:56, 25:18.) She now owes \$ [REDACTED] in unpaid NAMI, an amount which she does not dispute. (Exhibit D; Recording @ 38:52.)

At the hearing, the Appellant attempted to justify her decision not to pay the NAMI to the Facility by contending that she was only admitted as a short-term resident who would have

already returned home if the Facility had provided necessary services. (Recording @ 14:15, 32:35, 36:31, 37:03.) This complaint is irrelevant to the issue of her obligation to pay for or arrange to pay for the cost of her care while she remains at this nursing home. The NAMI obligation is non-negotiable, and is a condition of the Appellant's continued stay and receipt of any care whatsoever at the Facility. The Facility has established that the Appellant has failed, after reasonable and appropriate notice, to pay for the cost of her stay.

The Facility proposes to discharge the Appellant to ██████████  
██████ a residential health care facility/nursing home located in ██████████.  
(Exhibit A.) Cristina Giarratano, the Facility's Director of Social Work, explained that the Appellant continues to require nursing home care, and confirmed that the proposed discharge location is capable of providing identical services to those rendered by the Facility. (Recording @ 11: 16, 15:33, 18:16.)

Although the Appellant is dissatisfied with the Facility's services, she expressed concern over the proposed discharge plan because she is unsure if another nursing home would continue to arrange her transportation to and from her outpatient appointments, including a standing monthly appointment with a ████████ specialist in ██████████ (Recording @ 20:10, 41:44, 44:13, 45:51.) The Appellant testified that she had attempted to locate other nursing homes and Facility staff informed her that transfer to those locations was not feasible. The Appellant acknowledged that her unwillingness to pay her financial obligation minimizes possible alternative placements and was likely the reason why other nursing homes would not accept her referral. (Recording @ 53:41.)

The Appellant's ████████ contended that the required travel time to and from the ████████ specialist's office and ██████████ was inordinate, upwards of three hours. (Recording @

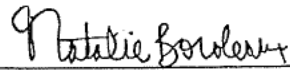
1:04:00, 1:07:26, 1:08:21.) Although the Appellant's travel time to outpatient appointments after she is discharged may be longer in duration, the discharge location also affords other specialty care which may obviate or reduce her need for extensive outpatient services. (Recording @ 1:12:37.) The Facility has established that the proposed discharge location is appropriate. The Appellant is encouraged to review the referral packet sent to █ and ensure that omitted information is provided to that nursing home regarding upcoming outpatient appointments and referrals.

The Appellant's █ asked for the Appellant's discharge date to be postponed, between 30 to 60 days, to afford the Appellant additional time to coordinate her appointments and decide whether she would prefer to return home or to any other nursing home with an available bed instead of being transferred to the proposed discharge location. (Recording @ 1:04:11.) The Facility has provided monthly notices to both the Appellant and her █ of the Appellant's outstanding NAMI balance and ongoing financial obligation for three years, along with 30 days' notice of the Facility's discharge determination (required pursuant to PHL § 2803-z(c)). That timeframe has been further extended due to the scheduling of the hearing and issuance of this decision. The Appellant has had ample time to consider alternative placements. Given her continued, undisputed refusal to pay her legally required portion of the cost of her stay, it is inappropriate for this decision to consider the requested additional extension. The Facility's decision is affirmed.

**DECISION**

1. The New Jewish Home, Sarah Neuman 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. The New Jewish Home, Sarah Neuman is authorized to discharge the Appellant pursuant to its ██████████, 2024 notice.

Dated: October 17, 2024  
Menands, New York



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Natalie J. Bordeaux  
Administrative Law Judge