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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

March 14, 2025

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Christopher Hong, DSW
Brookhaven Rehabilitation
and Health Care Center
250 Beach 17th Street
Far Rockaway, New York 11691

Christopher Hong, DSW
Brookhaven Rehabilitation
and Health Care Center
250 Beach 17th Street
Far Rockaway, New York 11691

Barbara Stegun Phair, Esq.
3 Dakota Drive
Lake Success, New York 11402

RE: In the Matter of [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

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


Appellant,

from a determination by

Brookhaven Rehabilitation & Health Care Center,
Respondent,

to discharge them from a residential health care facility.

COPY

Decision

Before: Kimberly A. O'Brien
Administrative Law Judge (ALJ)

Held at: Videoconference via WebEx

Date: March 12, 2025

Parties: , Pro se

Brookhaven Rehabilitation & Health Care Center
250 Beach 17th Street
Far Rockaway, New York 11691
By: Barbara Stegun Phair, Esq.

INTRODUCTION

On [REDACTED] 2025, Brookhaven Rehabilitation & Health Care Center (Respondent or facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), issued a discharge notice stating that it determined to discharge [REDACTED] (Appellant or resident) from the facility and the resident appealed the discharge determination to the New York State Department of Health (Department) pursuant to Title 10 of the New York Codes Rules, and Regulations (NYCRR) 415.3(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Barbara Stegun Phair, Esq. appeared on behalf of the facility and presented Robert Rosenberg, Business Office; Stephanie Roper, LPN; Oluwale Odulaja, MD; Arlene Comrie, Director of Nursing (DON); and Christopher Hong, Director of Social Work. The Appellant testified on his own behalf and presented [REDACTED], who is also a resident at the facility. At the Appellant's request, Mr. White, CIDNY Ombudsman, attended the hearing. The facility presented three exhibits including: Exhibit (Ex.) 1. Account Statement/Invoice; Ex. 2. Medicaid Budget Letters with Net Available Monthly Income (NAMI); and Ex. 3 Social Work Progress Notes/ Summary. The ALJ admitted ALJ Ex. 1 Notice of Hearing & Discharge Notice. A recording of the proceeding was made.

FINDINGS OF FACT

1. The Appellant has been a resident at the facility since [REDACTED] 2022. Ex. 1.

2. The Appellant has multiple diagnoses including [REDACTED]. He would like to receive [REDACTED] surgery but is not eligible because he has [REDACTED]. The Appellant ambulates with the assistance of a wheelchair. Testimony (T.) Odulaja, Comrie.

3. The Appellant receives Medicaid and is responsible for paying his net available monthly income (NAMI) to the facility. The facility has regularly communicated with the Appellant about his responsibility to pay his NAMI to the facility and he has been advised about the growing NAMI balance. T. Rosenberg, Hong; Ex. 1, Ex. 2.

4. At the time of the hearing the Appellant owed the facility approximately \$[REDACTED] Ex. 1; T. Rosenberg.

5. The Transfer/Discharge Notice dated [REDACTED] 2025 ([REDACTED] 2025 discharge notice) states that the transfer/discharge is necessary because the Appellant, after being given reasonable and appropriate notice, has failed to pay for his stay. ALJ Ex. 1.

6. The facility has proposed to transfer/discharge Appellant to another skilled nursing facility (nursing home), [REDACTED], New York ([REDACTED]), which provides the same level of care. ALJ Ex.1, Ex. 3; T. Roper, Odulaja, Comrie, Hong.

7. The Appellant has remained at the facility during the pendency of the appeal.

APPLICABLE LAW

A residential health care facility, also referred to in the Department of Health 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 of Health Rules and Regulations. (10 NYCRR 415.3[i][1].)

The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(b), which states:

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. Under SAPA § 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact. It is less than a preponderance of evidence but more than mere surmise, conjecture or speculation, and it constitutes a rational basis for a decision. (Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3d Dept. 1984], appeal dismissed 63 N.Y.2d 649.)

ISSUES

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

DISCUSSION

During the prehearing discussion the Appellant asked for an adjournment to obtain counsel and to secure an apartment through the [REDACTED]. The facility objected to the request as the Appellant has been aware of the hearing for some time, the facility has been discussing discharge with the Appellant for many months and his need to pay the facility. In addition an appropriate discharge placement has been secured. Based on the foregoing the ALJ denied the adjournment request.

Mr. Rosenberg testified that on multiple occasions he discussed with the Appellant his obligation to pay his NAMI to the facility. He explained to the Appellant that his NAMI is set by Medicaid, not the facility, and is based on the Social Security payment he receives each month. The NAMI increased during the Appellant's stay because the amount of his Social Security payment increased. The Appellant is aware of the outstanding balance and he has paid nothing to the facility.

Stephanie Roper testified that she is a nurse and has cared for the Appellant over the past two months. The Appellant is [REDACTED], ambulates with the assistance of a wheelchair, and is independent with his activities of daily living. [REDACTED] is a nursing home and provides the same level of care as the facility and it is an appropriate discharge location.

Arlene Comrie is the Director of Nursing and has overseen the Appellant's care and has collaborated with other staff at the facility to secure an appropriate discharge for the Appellant. The facility has a number of [REDACTED] residents, but they will not accept residents who are [REDACTED] because they do not have the equipment and space to meet their needs.

██████████ is aware of the Appellant's ██████████ and all his diagnoses, including that he is ██████████, and they have determined that they can accommodate his needs.

Mr. Hong is the Director of Social Work and testified that since ██████████ of 2024 he and other facility staff have been meeting with the Appellant. He explained to the Appellant that if he did not pay for his stay, they needed to begin discharge planning. The Appellant agreed to pay but the facility has received no payment. The Appellant expressed a desire to go to an assisted living facility (ALF) but when a placement was found the Appellant refused. The facility sent referrals to many nursing homes. ██████████ is the only nursing home that accepted the Appellant. He was denied by other nursing homes because they could not accommodate a ██████████ person of the Appellant's ██████████ and or because he will not pay for his stay. Mr. Hong is aware that the Appellant is working with ██████████. He was not aware that the Appellant received an ██████████ voucher but it does not change his opinion about the transfer. The process to secure an apartment through ██████████ can take a long time. Even if the Appellant is offered an apartment, he can refuse it. The Appellant's eligibility will not be effected by the transfer to ██████████ and he can continue to work with ██████████ to secure an apartment.

██████████ is a resident of the facility and a concerned friend of the Appellant's. He testified that the Appellant should remain at the facility until he can receive ██████████ surgery. He believes that ██████████ cannot provide the care that the Appellant needs and that Medicaid or other insurance should be paying in full for the Appellant's stay.

The Appellant testified that ██████████ issued a voucher to him and he saw an apartment in ██████████ and he is waiting for it to be approved. He wants to stay at the facility for another

month or two until an apartment is available. The Appellant is concerned that [REDACTED] will not be able to accommodate his needs and that the transfer will jeopardize his chance to obtain an apartment through [REDACTED]. In addition, the Appellant would like to have [REDACTED] surgery and [REDACTED] is far away from his physicians and his family and friends.

CONCLUSIONS

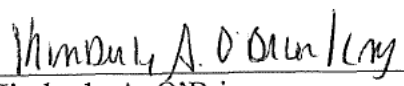
The facility has shown that it has provided reasonable and appropriate notice to the Appellant that he is required to pay his NAMI to the facility. During the Appellant's prolonged stay he agreed to pay his NAMI but has paid nothing. The facility secured an ALF placement for the Appellant that was closer to friends and family but he refused to go. The Appellant is not entitled to remain at the facility while he waits for an apartment to become available and or to become eligible for [REDACTED] surgery. The proposed discharge plan is appropriate, as it is available and provides the same level of care. (See FOF 1-6.)

DECISION

Respondent has established that its determination to discharge the Appellant was correct, and that its transfer/discharge location is appropriate.

1. Respondent is authorized to discharge the Appellant in accordance with its [REDACTED], 2025 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
March 14, 2025


Kimberly A. O'Brien
Administrative Law Judge

To: [REDACTED]

c/o Christopher Hong, DSW
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