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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

May 22, 2025

CERTIFIED MAIL/RETURN RECEIPT

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

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

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: nm
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

COPY

DECISION

[REDACTED]

Appellant,

from a determination by

BROOKHAVEN REHABILITATION AND
HEALTH CARE CENTER,

Respondent,

to discharge her from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Dates: April 23, 2025
May 7, 2025

Held at: Videoconference via WebEx

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

[REDACTED]

By: Pro se

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

By: Barbara Phair, Esq.
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JURISDICTION

By notice dated [REDACTED], 2025, Brookhaven Rehabilitation and Health Care 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).

HEARING RECORD

ALJ Exhibits: I – Letter with Notice of Hearing and Transfer/Discharge Notice
II – Scheduling Letter

Facility Exhibits: 1 – Medicaid documents
2 – [REDACTED] 2025 invoice
3 – Facility letter to Appellant regarding NAMI
4 – Social services progress note
5 – Updated Invoice

Facility Witnesses: Robert Rosenberg, Business Office Manager
Arleen Comrie, Director of Nursing
Christopher Hong, Director of Social Work
Kolawole Odulaja, M.D.

Appellant Exhibits: A – HRA letter
B – Livanta Determination Letter

Appellant Witnesses: [REDACTED] Appellant

Also Present: Regina DeLeon, Facility Director of Rehabilitation
Geraldine Lee, Facility MDS Coordinator

A digital recording of the hearing was made. (Duration of 1:32:24 on 4/23/25 and 30:27 on 5/7/25.)

ISSUES

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

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2021. (Facility Exhibits [Exs.] 1, 4.)
2. The Appellant is independent in all her activities of daily living (ADLs) and ambulates with a rolling walker. (T. Comrie, Odulaja.)
3. The Appellant was found eligible for Medicaid coverage for the period of [REDACTED] 2024, to [REDACTED], 2025. (Facility Ex. 1; Appellant Ex. A.)
4. The Facility utilized a web-based application, MedNY ePACES, to identify the Appellant's monthly net available monthly income (NAMI) for that period as \$[REDACTED] (Facility Ex. 1.)
5. On [REDACTED], 2025, the Facility provided the Appellant with an invoice reflecting that she owed \$[REDACTED] per month from [REDACTED] 2024 through [REDACTED] 2025, with a total net balance of \$[REDACTED] (Facility Ex. 2.)
6. Robert Rosenberg, Business Office Manager, personally provided the Appellant with the invoice on [REDACTED], 2025. The amount owed by the Appellant was also the subject of a multidisciplinary team meeting held with the Appellant on [REDACTED] 2025. (T. Rosenberg; Facility Ex. 4.)
7. On [REDACTED], 2025, the Facility issued a Transfer/Discharge Notice to the Appellant which proposed discharge to [REDACTED], a skilled nursing facility in [REDACTED] New York. (ALJ Ex. I.)
8. The Transfer/Discharge Notice states that the Appellant will be discharged on [REDACTED], 2025, because she has failed, after reasonable and appropriate notice, to pay for her stay at the Facility. (ALJ Ex. I.)
9. The Appellant timely appealed the Facility's discharge determination.

10. The hearing proceeded on [REDACTED], 2025, with both parties fully presenting their cases. A second day was scheduled for two weeks later upon information that the Appellant had a Medicaid hearing scheduled for [REDACTED] 2025, and was anticipating resolving an alleged dispute regarding her NAMI/benefits. (T. Appellant.)

11. On the second day of the hearing, the Appellant reported that the Medicaid hearing had been "adjourned" with no new date scheduled, and this hearing proceeded to conclusion. (T. Appellant.)

12. Also on the second day of the hearing, the Facility acknowledged that there was confusion surrounding the Appellant's NAMI start date, specifically acknowledging that the Medicaid coverage notice/NAMI letter was dated [REDACTED], 2025 despite the coverage period beginning in [REDACTED] 2024. (Facility Ex. 1; Appellant Ex. A.)

13. The Facility then offered a revised invoice in which it removed the initial NAMI charges for [REDACTED] 2024 through [REDACTED] 2025. The new invoice billed the Appellant \$[REDACTED] per month from [REDACTED] 2025 through [REDACTED] 2025, with a total net balance of \$[REDACTED] (Facility Ex. 5.)

14. 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'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 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

The Facility offered into evidence a notice obtained from the web-based application it utilizes to obtain Medicaid information, which letter referred to an included budget letter for the Appellant's NAMI amount. This information was shared with the Appellant no later than [REDACTED] 2025, when she was provided an invoice and again on [REDACTED], 2025, when it was discussed at a multidisciplinary team meeting.

The Appellant states that she does not believe that she owes a NAMI but that if she did owe a NAMI then she would figure out a way to take care of the bill. In support of her position, the Appellant cites to a letter she reportedly received from the NYC Department of Social Services that does not state any NAMI amount. (Appellant Exhibit A.) The document submitted by the Appellant is seemingly incomplete as it references that is “Page 1 of 2” and the second page was not offered into evidence. The Appellant acknowledges that she has income, which she testified is sent directly to her apartment where her two children, ages [REDACTED] and [REDACTED] are living.

The evidence supports that the Appellant has failed, after reasonable and appropriate notice, to pay her NAMI for her stay at the Facility from at least [REDACTED] 2025 to the date of the hearing. The Facility has met its burden to show that discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(b).

The Facility has proposed discharge to another skilled nursing facility located in [REDACTED] New York. The Facility's Director of Nursing, Arleen Comrie, testified that the Appellant is independent with her activities of daily living and that she can ambulate with a rolling walker. She further testified that the Appellant could appropriately live at an assisted living facility rather than a skilled nursing facility.

The Appellant testified that she cannot go home to her apartment because of impediments such as the stairs for ingress/egress and it being too small to fit a commode and for her to move around with her rolling walker. The Appellant testified that she goes out on pass to her apartment on occasion and that her [REDACTED] must carry her rolling walker for her. She further testified that the proposed discharge location is too far from her apartment where her kids are residing and that she needs to be able to visit them. The Appellant also testified that she is unable to go to an assisted living facility due to a lack of the necessary financial resources.

The Appellant's desire to retain her apartment in the community is understandable, but she cannot continue to live at the Facility without paying for her stay based on her prioritizing paying for her apartment. Further, even though she could functionally live in an assisted living setting, the Facility was only able to identify a skilled nursing facility that will accept her given her finances. While it is further from her apartment than she prefers, it is a safe and appropriate discharge plan.

DECISION

Brookhaven Rehabilitation and Health Care Center has established that its determination to discharge the Appellant is permissible, and that its discharge plan is appropriate.

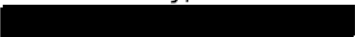
1. The Appellant may be discharged in accordance with the Transfer/Discharge Notice dated [REDACTED] 2025.

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: May 22, 2025


Tina M. Champion
Administrative Law Judge

TO:


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