



**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner
August 16, 2018

CERTIFIED MAIL/RETURN RECEIPT

Michael Monahan, Administrator
Mary Manning Walsh Nursing Home
1339 York Avenue
New York, New York 10021

[REDACTED] Resident
C/o Mary Manning Walsh
Nursing Home
1339 York Avenue
New York, New York 10021

Susan M. Marotta, Esq.
Archdiocese OF New York
Office of Legal Affairs
1011 First Avenue, Suite 1150
New York, New York 10021

[REDACTED] Legal Guardian

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,


James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
Enclosure

In the Matter of
Resident [REDACTED] Mary Manning Walsh Nursing
Home

Administrative Law Judge's Decision

Appeal from a Nursing Home Resident Discharge
pursuant to Title 10 NYCRR 415.3(h)

Before: Administrative Law Judge (ALJ) James F. Horan

For the Mary Manning Walsh
Nursing Home (Facility):

Susan M. Marotta, Esq.
Archdiocese of New York/ Office of Legal Affairs

For Resident [REDACTED] (Appellant):

[REDACTED] Legal Guardian

The Appellant requested a hearing in this matter to appeal the Facility's decision to discharge the Appellant to another nursing home. The Facility alleges that the Appellant failed after sufficient and appropriate notice to pay her share for her stay in the facility. After a two-day hearing in this matter, at which the Facility presented witnesses and both parties presented documentary evidence, and after the ALJ left the record open to receive additional evidence, the ALJ finds that the Facility has established that the Appellant failed to pay her share for her care at the Facility. The ALJ finds the Appellant's discharge appropriate and the ALJ finds that the Facility has provided an appropriate discharge plan to another nursing home.

I. Background

Under Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) § 415.3(h), a nursing home resident holds certain rights in regard to transfer or discharge. Title 10 NYCRR § 415.3(h)(1)(i)(b) allows discharge if a resident

has failed to pay, after reasonable and appropriate notice for her stay at the Facility. The resident may challenge the discharge in a hearing pursuant to §415.3(h)(2). Under the hearing procedures at § 415.3(h)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under New York Administrative Procedure Act § 306(1) (McKinney 2018), 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; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v. Tarantino, 101 A.d.2d 651, 475 N.Y.S.2d 562 (3rd Dept. 1984), appeal dismissed 63 N.Y.2d 649.

The Facility provided a Discharge Notice [Hearing Exhibit ALJ I] to the Appellant on [REDACTED] 2018, citing as the grounds for the discharge the failure to pay. The Appellant then requested the hearing that took place at the Facility on May 31 and July 27, 2018. At the hearing, the Facility presented as witnesses Medicaid Coordinator Nerissa Lawrence and Director of Social Work Daisy Lope. The ALJ received the following documents into the record, at and after the hearing:

- ALJ I - Notice of Hearing,
- ALJ II - July 17, 2018 Email Note ALJ to Parties,
- ALJ III - August 2, 2018 Email Note ALJ to Parties,
- ALJ IV - July 24, 2018 Email Note ALJ to Parties.

Appellant A - Photocopy of [REDACTED] 2018 Check.

- Facility Day 1, Exhibit 1- Invoice [REDACTED] 2018;
- Facility Day 1, Exhibit 2- Invoice [REDACTED] 2018;
- Facility Day 1, Exhibit 3- Account Correspondence [REDACTED], 2018;
- Facility Day 2, Exhibit 1- Account Balance [REDACTED] 2018;
- Facility Day 2, Exhibit 2- Account Correspondence [REDACTED] 18;
- Facility Day 2, Exhibit 3- Progress Notes Starting On [REDACTED] 2018.

The record also included a digital audio tape from the hearing on two compact discs (CDI and II). References to testimony from the record will indicate the CD which contains the testimony and the point on the CD at which the testimony occurs.

II. Findings of Fact

Following the hearing, the ALJ considered the exhibits and testimony and rendered the following findings of fact. The matters in brackets following the findings reflect testimony from the hearing tape or exhibits in evidence [Ex] on which the ALJ relied in making the findings. If contradictory information appears elsewhere in the record, the ALJ considered that information and rejected it.

1. The [REDACTED]-year-old Appellant is a resident at the Facility [Day 2 Ex 3].
2. The Appellant's diagnoses include [REDACTED] [Day 2 Ex 3].
3. The Appellant is [REDACTED], require [REDACTED] assistance with bed mobility and is dependent with transfers [Day 2, Ex 3, page 8 of 14].
4. The Facility concedes that the Appellant requires skilled nursing care [CDII at 6:40].
3. Prior to [REDACTED] 2018, the Appellant was solely responsible (private pay) for paying the expenses for her care [CDI at 2:20].
4. The Appellant's Guardian made [REDACTED] payment on the private pay balance owing to the Facility on [REDACTED] 2018 [Ex A].
5. As of the second hearing day, the Appellant owed the Facility [REDACTED] on the private pay balance [Day 2 Ex 1].

6. The Appellant's Guardian conceded at the first hearing day that the Appellant's bank account contained insufficient funds to pay the private pay balance [CDI at 18:07].

7. As of [REDACTED] 2018, Medicaid became available to cover a portion of the expenses for the Appellant's care at the Facility [CDI at 9:23].

8. Medicaid requires that an enrollee must pay all available net monthly income (NAMI), such as pensions and Social Security, to a facility for care before Medicaid pays the remaining charges [CDI at 11:18].

9. With the exception of a one-time [REDACTED] charge for [REDACTED] 2018, Medicaid set the NAMI for the Appellant at [REDACTED] per month [CDI at 10:30].

10. The Appellant made only one NAMI payment in [REDACTED] 2018 [Day 2 Ex 1].

11. As of the second hearing day, the NAMI balance totaled [REDACTED] [Day 2 Ex 1].

12. The Facility has advised the Appellant and the Appellant's Guardian concerning the outstanding Private Pay and NAMI balances [Day 1 Ex 3; Day 2 Ex 2].

13. The Appellant's Guardian conceded that she was aware of the Private Pay balance, but indicated that she only became aware of the obligation to pay the NAMI as of [REDACTED] in 2018 [CDI 16:23 and 17:30].

III. Conclusions

The ALJ concludes that the Appellant received legally sufficient notice concerning the hearing, that the Facility has demonstrated that grounds exist for involuntary discharge and the Facility has presented an appropriate discharge plan.

Notice: At the May 31, 2018 hearing day, the Appellant's Guardian stated that the Appellant wished to leave the Facility and return to her apartment. The Guardian indicated, however, that the Appellant would need [REDACTED] home care services and that up to that point four home care agencies had rejected the Appellant's case. The Guardian speculated that a [REDACTED] diagnosis in the Appellant's medical chart was causing difficulty in obtaining home care. The Facility agreed to a 45-day interruption in the proceedings to allow the Facility to perform a new assessment on the Appellant's condition and to allow the Guardian a chance to contact more home care agencies. In return, the Guardian agreed to pay the NAMI fee [REDACTED] and did make such payment. On the 45th day, the Facility requested by email that the ALJ return the matter to the hearing calendar because there was no success in finding home care for the Appellant, who needs [REDACTED] hour care and because the total balance owing to the Facility totaled over [REDACTED] [ALJ IV]. Both parties indicated they were available to reconvene the hearing on July 27, 2018 [ALJ IV].

On July 27th, the Appellant's Guardian failed to appear at the hearing and the Guardian indicated later that she thought there would be a conference call on July 27th [ALJ III]. The ALJ finds that the email records in evidence demonstrate that the ALJ sent notes to both parties on July 17th and July 24th stating that the hearing would reconvene at the Facility on July 27, 2018. The ALJ concludes that the parties had legally sufficient notice that there would be a second hearing day at the Facility on July 27, 2018. The ALJ finds no reason to convene an additional hearing day. The ALJ provided all documents in evidence to the parties on August 2, 2018 and asked if the Guardian had additional comments to make or additional documents to submit. The Guardian answered on August 2nd that she had nothing further to submit [ALJ III]. The ALJ closed the record at that point.

Grounds: The ALJ finds that the Facility has demonstrated that grounds exist for involuntary discharge pursuant to Title 10 NYCRR § 415.3(h)(1)(i)(b) because the Appellant has failed to pay, after reasonable and appropriate notice for her stay at the Facility. The Guardian indicated that there were insufficient funds to cover the existing balances and indicated further that the Appellant was unable to keep up with NAMI payments, because the Appellant's income goes to pay the rent on the apartment the Appellant wishes to retain.

Discharge Plan: The Facility proposes discharge to another skilled nursing facility,

██████████ The ALJ finds the proposed discharge location appropriate because ██████████ provides the same level of care that the Appellant receives at the Facility. The Facility concedes that the Appellant requires 24-hour care.

The Appellant wishes to return to her apartment, but no home care provider has offered ██████████ hour care. Four home care agencies had denied care prior to the first hearing day and the Guardian speculated that the denials were due to the Appellant being diagnosed as ██████████. The Guardian admitted, however, that one home care agency indicated that they rejected the Appellant because she can ██████████ [CDI 26:10]. The parties agreed to the 45-day break in the hearing to obtain a new assessment on the Appellant and to offer the Guardian an opportunity to contact more home care agencies.

The new assessment once again found that the Appellant suffers ██████████ [Day 2 Ex 3]. Also, the agency Maximus indicated that the Appellant would be offered home care at 7 days per week, but only 6 hours per day, because the Appellant is not bed bound [Day 2 Ex 3]. This means the Appellant will be unable to return to her apartment due to less than ██████████ hour care. Further, the Facility will not agree to allow the Appellant to remain at the Facility with the outstanding and

increasing balances. The ALJ finds the proposed discharge [REDACTED] as the appropriate alternative.

ORDER

NOW; after considering the request for Hearing, the testimony and the documents in evidence, the ALJ issues the following Order:

1. The ALJ dismisses the discharge appeal.
2. The Facility may proceed with implementing the Discharge Plan upon receiving this

Decision.


Dated: Menands, New York
August 16, 2018



James F. Horan
Administrative Law Judge

To: Susan M. Marotta, Esq
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 Legal Guardian

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