



# Department of Health

ANDREW M. CUOMO  
Governor

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

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

February 12, 2019

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Sunrise Manor  
1325 Brentwood Road  
Bay Shore, New York 11706

Andrea Serie, Administrator  
Sunrise Manor  
1325 Brentwood Road  
Bay Shore, New York 11706

**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,

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: 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 :  
:  , :  
: Appellant, :  
: from a determination by :  
: Sunrise Manor, :  
: Respondent, :  
: to discharge him from a residential health care facility. :  
:

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**ORIGINAL**

**DECISION**

**Hearing Before:** Ann H. Gayle  
Administrative Law Judge

**Held at:** Sunrise Manor  
1325 Brentwood Road  
Bay Shore, New York 11706

**Hearing Date:** January 16, 2019  
Record closed January 29, 2019

**Parties:** Sunrise Manor  
By: Andrea Serie, Administrator  
  
*Pro Se*

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as Sunrise Manor (“Respondent” or “Facility”) is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(h). Respondent determined to discharge █ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(b), which provides, in pertinent part:

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.

Appellant appealed the discharge determination to the New York State Department of Health (“NYSDOH”), and a hearing on that appeal was held. Pursuant to §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate; the standard of proof is substantial evidence. State Administrative Procedure Act §306.1. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact; it is less than a preponderance of the evidence but more than mere surmise, conjecture or speculation... Put differently, there must be a rational basis for the decision. Stoker v. Tarentino, 101 A.D.2d 651, 652, 475 N.Y.S.2d 562, 564 [App. Div. 3d Dept. 1984], mod. 64 N.Y.2d 994, 489 N.Y.S.2d 43.

A digital recording of the hearing was made part of the record. Appellant appeared and testified on his own behalf. Andrea Serie, Administrator, Christine Felicio, Business Office Representative, and Jamie Umanzor, Medicaid Coordinator, testified for Respondent.

The following documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ, Facility, and Appellant Exhibits:

ALJ

I: Notice of Hearing with attached Notice of Discharge/Transfer

Facility:

- 1: Medicaid budget with █ 2018 “Notice Date”
- 2: █ 2019 recalculated Medicaid budget
- 3: █/19 running bill
- 4: █/17 Admission Agreement

Appellant:

- A: Appellant’s Affidavit<sup>1</sup>
- B: █/18 itemized bill
- C: █/18 blood test results

ISSUE

Has Sunrise Manor established that the discharge is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (“T”) of witnesses and exhibits (“Ex”) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Respondent, Sunrise Manor, is a residential health care facility located in Bay Shore, New York. (Ex I)
2. Appellant, █, age █ was admitted to the Facility on █, 2017. An Admission Agreement signed by the Facility and Appellant on █ 2017, includes

<sup>1</sup> The parties were informed that this Affidavit would not be given any weight and would not be considered at all in this Decision. Appellant expressed his agreement with that determination at 59:50 of the recording.

█/Sunrise

Appellant's agreement to pay NAMI (Net Available Monthly Income) to the Facility. The █ County Department of Social Services ("DSS") established Appellant's NAMI to be \$0.00 from █/17 to █/17; \$█ for █ 2017; \$█ per month from █/17 to █/17; \$█ per month from █/18 to █/18; \$█ per month from █ 18 to █/18; and \$█ per month effective █/19. Christine Felicio hand delivered Appellant's monthly bill to Appellant in his room each month<sup>2</sup>. Appellant did not appeal DSS' determinations for 2017 or 2018, and he has not made any NAMI payments to the Facility. A █ 2019 invoice shows an outstanding balance of \$█ (Ex 1; Ex 2; Ex 3; Ex 4; T Serie, Felicio, Umanzor)

3. By notice dated █, 2018 ("discharge notice"), Respondent advised Appellant that it had determined to discharge him on the grounds of failure, after reasonable and appropriate notice, to pay (or have paid under Medicare, Medicaid, or private insurance) for his stay at the Facility. The discharge location is █ ("█ located at █ █ █. (Ex I)

4. Appellant has remained at the Facility pending the outcome of this proceeding.

#### DISCUSSION

It is a resident's responsibility and obligation to pay for a stay at a facility. Respondent proved that throughout the course of Appellant's stay at the Facility, Facility representatives discussed with and explained to Appellant that he was responsible to pay to the Facility the monthly NAMI that was established by DSS. Appellant acknowledged that he has not paid his NAMI.

Ms. Felicio testified that Medicaid pays for custodial care; Medicare and private insurance cover medical expenses, and that the resident is responsible for his/her NAMI; neither

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<sup>2</sup> Appellant stipulated at 28:40 of the recording that Ms. Felicio gave him the bills each month.

█/Sunrise

Medicare nor a resident's other insurance pays toward or for the resident's NAMI which is established by DSS, not the Facility. Ms. Umanzor testified that she met with Appellant many times and explained the difference between his AARP copayment coverage and the NAMI for which he is responsible. She testified that when Appellant informed her, in █ 2018, that he would not pay his NAMI or allow his Social Security income to be paid directly to the Facility, and that he did not wish to have Medicaid pay for his stay at the Facility, she informed him that his cost to pay privately would be approximately \$█ per month. Appellant informed Ms. Umanzor that he could not pay that amount at that time, and his custodial care at the Facility continued to be covered by Medicaid.

Respondent identified █ as the discharge location for Appellant. █ is a skilled facility in upstate New York licensed by the NYSDOH; █ offers similar services to those provided by Respondent. Appellant testified that he would not go to █ because all his doctors are in the downstate area, and that he has a place in █ where he will live when he leaves the Facility. Appellant testified that he is making progress with the therapy he receives in the community and that not only does he not intend to remain at the Facility for long-term care, but he is "counting the minutes" until he can leave. Appellant testified that he believes he would be ready to leave the Facility "to play it real safe I'll say █ but I believe it's going to be way before that ... the end of █

The parties represented at the hearing that they were interested in attempting to resolve this matter, but they reported on █, 2019 conference calls that they did not ultimately reach an agreement for payment that would allow Appellant to remain at the Facility. Appellant testified at the hearing and reiterated on the conference calls that he would be able to settle his debt with the Facility when he receives a payout from a pending lawsuit.

**CONCLUSION**

Respondent has proven that Appellant has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third-party insurance) his stay at the facility; Medicare or Appellant's other insurance will not pay toward his NAMI for custodial care; DSS did not deny benefits; and Appellant's NAMI, Social Security benefit, is available and Appellant refuses to pay. Respondent has also proven that █ is available and is an appropriate discharge location for Appellant.

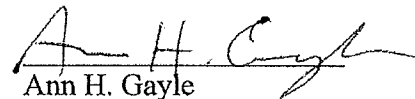
**DECISION**

I find that the Facility has proved by substantial evidence that the discharge is necessary. The appeal by Appellant is therefore DENIED.

Respondent, Sunrise Manor, is authorized to discharge Appellant in accordance with the █ 2018 Discharge Notice. The discharge shall occur no sooner than █ 2019, in order to give Appellant an opportunity to make arrangements to move into the █ home or to pursue further legal action<sup>3</sup>. Appellant may leave the Facility sooner than █ 2019, if a home in the community is available, or for any other reason Appellant chooses to leave.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

Dated: New York, New York  
February 11, 2019

  
Ann H. Gayle  
Administrative Law Judge

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<sup>3</sup> Appellant indicated that he intended to bring an Article 78 proceeding if the decision in this matter was not favorable to him.

██████/Sunrise

TO: ██████████  
c/o Sunrise Manor  
1325 Brentwood Road  
Bay Shore, New York 11706

Andrea Serie, Administrator  
Sunrise Manor  
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