



Department of Health

ANDREW M. CUOMO
Governor

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

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

April 15, 2019

CERTIFIED MAIL/RETURN RECEIPT

Moshe Blackstein, Administrator
Beth Abraham Center for Rehabilitation
612 Allerton Avenue
Bronx, New York 10467

[REDACTED]
c/o Beth Abraham Center for Rehabilitation
612 Allerton Avenue
Bronx, New York 10467

[REDACTED]

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: 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

BETH ABRAHAM CENTER FOR REHABILITATION

Respondent,

to discharge her from a residential health facility

COPY

DECISION

Beth Abraham Center for Rehabilitation (Facility) issued a Notice of Discharge to ██████████ (Resident). The Resident's ██████████, requested an appeal of the proposed discharge. Administrative Law Judge (ALJ) William J. Lynch, Esq., commenced a hearing on January 29, 2019, and continued the hearing on March 12 and April 9, 2019. The Hearing was held in accordance with the Public Health Law of the State of New York; Parts 51 and 415 of Volume 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR); Part 483 of the United States Code of Federal Regulations (CFR); and the New York State Administrative Procedure Act (SAPA). Evidence was received; witnesses were sworn or affirmed and examined. An audio recording of the proceeding was made.

The following individuals have attended one or more of the hearing days: ██████████, Resident; ██████████, Resident's ██████████ Moshe Blackstein, Administrator; Dovi Friedman, Assistant Administrator; Avi Neumann and Alex Ehrman, Finance Coordinators; Yocheved Wagschal, Medicaid Coordinator; Robin Tucker-Brandon, Social Worker.

ISSUES

The Medical Assistance Program (Medicaid) determined the net available monthly income (NAMI) which the Resident was required to pay toward her stay at the Facility. The Facility proposed to discharge the Resident based on her failure to pay the NAMI. The issues to be determined in this proceeding are whether the discharge proposed by Respondent is necessary and whether the discharge plan is appropriate. Respondent has the burden of proving its case by substantial evidence (SAPA § 306[1], 10 NYCRR § 415.3[h][2][iii]).

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Citations in parentheses refer to the audio recording of the hearing or exhibits. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. The Medicaid Nursing Home Eligibility Division of the New York City Department of Social Services (DSS) determined that the Resident was eligible for Medicaid coverage for her stay at the Facility effective [REDACTED] 2017, and that she was required to pay \$ [REDACTED] as her NAMI toward the cost of her institutional care. The NAMI was based on the Resident's monthly Social Security income. (Facility Ex. 2.)

2. The Resident made no NAMI payments for the eighteen months from [REDACTED] 2017 through [REDACTED] 2019. Therefore, she owed \$ [REDACTED] as of the first hearing day. (Facility Ex. 3.)

3. The Resident is [REDACTED] years old. She has multiple diagnoses including [REDACTED] following a [REDACTED]. (Facility Ex. 8.)

4. The Resident attended the three hearing days and stated repeatedly that she wished to remain in the Facility. Her demeanor was pleasant and attentive, but she appeared to have [REDACTED] and no knowledge of her income or the arrears owed to the Facility.

5. The Resident's [REDACTED], attended the first two hearing days and claimed that he was authorized to act on his [REDACTED] behalf. However, the Durable Limited Power of Attorney document which he offered as evidence of this authority was incomplete and therefore ineffective. (Resident Ex. A.)

6. On the first hearing day which was January 29, 2019, Mr. [REDACTED] agreed to make one NAMI payment of \$ [REDACTED] in a few days and the balance of arrears by [REDACTED] 2019. Eventually, Mr. [REDACTED] made three NAMI payments totaling \$ [REDACTED] but he did not pay the remaining arrears owed through [REDACTED] 2019 of \$ [REDACTED]

7. A second hearing day was held on March 12, 2019. By that time, the Facility had arranged to become the representative payee of the Resident's Social Security Income commencing in April 2019.

8. A third hearing day was held on April 9, 2019. The Facility reported that it had learned that the Resident was the recipient of a pension in the monthly amount of \$ [REDACTED] and that the Resident's banking records indicated that a withdrawal of that amount was made each month shortly after the deposit. Mr. [REDACTED] admitted that he and only one other family member had access to the Resident's bank account. He claimed to have no knowledge of the withdrawals and refused to disclose the name of the other family member.

9. In its notice, the Facility proposed discharging the Resident to an associated facility in Buffalo, New York. After the first hearing day, the Facility faxed a Patient Review Instrument (PRI) to five skilled nursing facilities in the Bronx. The Facility social worker stated that two

facilities declined admitting the Resident, and the three others had not responded. (Facility Ex. 1, 6 and 7.)

ANALYSIS AND CONCLUSIONS

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR 415.3[h][1]). In this instance, Respondent alleges that the Appellant's discharge is permissible pursuant to 10 NYCRR 415(h)(1)(i)(b), which permits the transfer of a resident 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.

The Facility has become the Representative Payee for the Resident's Social Security income and is receiving the Resident's NAMI payment as established by DSS. However, the Facility is owed the arrears for the period from [REDACTED] 2017 through [REDACTED] 2018. In addition, the Facility has discovered that the Resident is the recipient of a monthly pension which has not yet been reported to DSS, and which will increase the Resident's NAMI. The Facility is legally obligated to report this income to DSS.

Mr. [REDACTED] admitted that only he and a second family member have access to the bank account where the Resident's income has been deposited. Mr. [REDACTED] did not comply with his agreement to pay the arrears owed to the Facility by [REDACTED] 2019. He then failed to attend the last hearing day, though he participated by telephone. His statements were inconsistent and

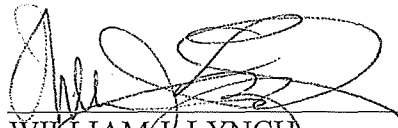
evasive raising a grave concern that the income of this cognitively impaired Resident is being exploited by her family members.

Although the Facility has established that the Resident owes arrears of her NAMI, the Facility has not met its burden of establishing that the discharge is necessary or that the discharge plan appropriate as required by 10 NYCRR § 415.3[h][2][iii]. The Resident clearly expressed her desire to remain in the Facility, but she is cognitively impaired and appears to have no understanding of her income, assets or obligations. Mr. [REDACTED] initially claimed to be acting on his [REDACTED] behalf and agreed to pay the arrears, but he did not. His subsequent statements have been inconsistent and evasive. Under these circumstances, the Facility is aware that the Resident is possibly being exploited by her family members and should seek the assistance of the Ombudsman or Adult Protective Services to ascertain whether this payment issue can be resolved.

DECISION AND ORDER

1. The Facility is NOT authorized to discharge the Resident.
2. The Facility shall notify the DSS Medicaid Program that the Resident is the recipient of a pension in addition to her Social Security income.
3. The Facility shall notify the Ombudsman and Adult Protective Services that the Resident may be a victim of exploitation by a family member.
4. This Decision shall be effective upon service on the Appellant by personal service or by certified or registered mail.

DATED: Albany, New York
April 15, 2019


WILLIAM J. LYNCH
Administrative Law Judge