



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

May 13, 2019

## CERTIFIED MAIL/RETURN RECEIPT

Rayna Terry-Taylor, DSW  
Terence Cardinal Cooke  
1249 Fifth Avenue  
New York, New York 10029

██████████  
c/o Terence Cardinal Cooke  
1249 Fifth Avenue  
New York, New York 10029

Amy Ebbinger, Esq.  
1011 1<sup>st</sup> Avenue  
11<sup>th</sup> Floor  
New York, New York 10022

Wanda Coles, Ombudsman  
156 20 Riverside Drive West  
New York, New York 10032

**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

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

██████████

Appellant,

from a determination by

ARCHCARE AT TERENCE CARDINAL COOKE  
HEALTH CARE CENTER,

Respondent,

to discharge her from a residential health facility

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DECISION

Archcare at Terence Cardinal Cooke Health Care Center (Facility) issued a Notice of Transfer/Discharge, dated ██████████, 2019, to ██████████ (Resident). The Resident appealed the Facility's proposed discharge. Administrative Law Judge (ALJ) William J. Lynch, Esq., commenced a hearing on February 28, 2019, and continued the hearing on May 8, 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 participated in the hearing: ██████████, Resident; Wanda Coles, Ombudsman; Amy Ebbinger, Esq., Counsel for the Facility; Rayna Terry-Taylor, Social Work Director; Vickey Johnson, Director of Patient Accounts; Farah Naz, R.N., Nurse Manager; Joan Forbes, R.N., Manager; and Joan Skylers, R.N., Chief Nursing Officer.

## 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 proposed discharge 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 Resident is a [REDACTED]-year-old female admitted to the Facility on [REDACTED] 2018 with diagnoses including [REDACTED]. She is alert and oriented. (Facility Ex. 4.)

2. The Medicaid Nursing Home Eligibility Division of [REDACTED] (DSS) determined that the Resident was eligible for Medicaid coverage for her stay at the Facility effective [REDACTED] 2018, and that she was required to pay \$ [REDACTED] as her NAMI with non-chronic care budgeting through [REDACTED], 2018, and thereafter pay \$ [REDACTED] with chronic care budgeting. The NAMI is based on the Resident's monthly Social Security monthly income of \$ [REDACTED] (Facility Ex. 2.)

3. The Facility met with the Resident to explain the required NAMI and provided her with copies of the DSS documents and invoices for the charges due to the Facility. (Facility Ex. 1.)

4. In its notice, the Facility proposed discharging the Resident to an associated facility in [REDACTED]. (Facility Ex. 5.)

5. After the first hearing day, the Facility social worker met with the Resident to identify possible discharge locations in [REDACTED]. The Facility social worker then prepared and sent a Patient Review Instrument (PRI) to the eight skilled nursing homes which had been identified. During the subsequent weeks, the social worker followed up with those facilities and was told that the Resident's application was denied.

#### 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 Resident did not dispute the amount owed or her failure to pay. She claims that she has used and will continue to use her income to pay the rent on an apartment where her [REDACTED] currently resides. At the hearing, the Resident objected to the proposed discharge location because


of the distance from her family members. The Facility afterwards met with the Resident and established a list of eight other possible locations. The Facility social worker then sent a PRI to those facilities and followed up for a response, but all rejected the Resident's application.

The Facility has established that it provided the Resident with reasonable notice of the charges owed and that the Resident has made no payments. The Facility also established that its social worker made reasonable efforts to accommodate the Resident's desire to remain close to her family members, but the identified facilities have refused to admit the Resident. Therefore, the record demonstrates that the discharge plan is appropriate as required by 10 NYCRR § 415.3[h][2][iii].

DECISION AND ORDER

1. The Facility is authorized to discharge the Resident in accordance with the discharge notice.
2. This Decision shall be effective upon service on the Appellant by personal service or by certified or registered mail.

DATED: Albany, New York  
May 10, 2019

  
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WILLIAM J. LYNCH  
Administrative Law Judge