



Department of Health

ANDREW M. CUOMO
Governor

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

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

June 7, 2019

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o River Ridge Living Center
100 Sandy Drive
Amsterdam, New York 12010

Stephen E. Anderson, Esq.
Legal Aid Society of Northeastern NY
6 Market Street
Amsterdam, New York 12010

Ms. Shannon McHale, LNHA, Administrator
River Ridge Living Center, LLC
100 Sandy Drive
Amsterdam, New York 12010

RE: In the Matter [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

-----X

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

[REDACTED]

Appellant,

from a determination by

RIVER RIDGE LIVING CENTER, LLC

Respondent,

to discharge her from a residential health :
care facility. :

-----X

COPY

DECISION

Hearing Before:

Sean D. O'Brien
Administrative Law Judge

Held at:

River Ridge Living Center
100 Sandy Drive
Amsterdam, New York 12010

Hearing Date:

June 3, 2019

Parties:

River Ridge Living Center, LLC
By: Shannon McHale, Administrator

[REDACTED], Resident
By: Stephan E. Andersson, Esq.
Legal Aid of Northeastern NY
6 Market Street
Amsterdam, New York 12010

JURISDICTION

By notice dated [REDACTED] 2019, River Ridge Living Center, LLC (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [REDACTED] (the Appellant) from the Facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) Section 415.3(h).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and attached Facility Discharge Notice
II- Letter Decision dated May 20, 2019

Facility Exhibits: 1-4

Facility Witnesses: Teresa Davis-Medicaid Coordinator
Leigh Eckmann-Director Resident & Family Services

Appellant's Witness: Appellant testified on her own behalf

Appellant's Exhibits: A-H

A digital recording of the hearing was made part of the record.

ISSUE

Has the Facility established that the determination to discharge the Appellant is correct?

FINDINGS OF FACT

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

1. The Appellant is a [REDACTED]-year-old woman who was admitted to the Facility on [REDACTED] [REDACTED] 2016 for short term rehabilitation after a series of [REDACTED] surgeries. (Facility Exhibit 1; Appellant Exhibit G; T. [REDACTED])

2. On [REDACTED] [REDACTED] 2016, the Appellant's status was changed to permanent placement at the facility. (Appellant Exhibit G).

3. On [REDACTED], 2016 the facility revised the permanent placement status of Appellant back to short term rehabilitation because Appellant was seeking to be discharged back to the community. During this period of her stay Appellant's Net

Available Monthly Income (NAMI) amount was [REDACTED] dollars a month. (Facility Exhibit 3; Appellant Exhibit G).

4. On [REDACTED], 2016, by medical determination, the Facility changed Appellant's status to long term care service. (Facility Exhibit 1; Appellant Exhibit G).

5. Due to this change in status, the [REDACTED] County Department of Social Services ([REDACTED] determined Appellant was required to pay \$[REDACTED] as her NAMI toward the cost of her institutional care. The NAMI is based on Appellant's monthly Social Security while Medicaid covers the balance of her costs at the Facility. (Facility Exhibit 2; Appellant Exhibit A; T. Davis).

6. In [REDACTED] 2018 Appellant began working with Facility representatives and the community resources of the [REDACTED] [REDACTED] Program to find appropriate housing in the community. However, her status was not changed via the LDSS Form 3559 (Medicaid Recipient Change in Status Form) and [REDACTED] was not informed of this change until [REDACTED] 2019. (Facility Exhibit 4; Appellant Exhibits D, E, G and H; T. [REDACTED] T. Eckmann; T. Davis)

7. The Facility now wants to change the status of Appellant retroactively to [REDACTED] 2018 from Chronic Care (long

term care) to Community Budget (non-permanent) which will impact her NAMI amount and any past due NAMI amounts to the Nursing Home. (Appellant Exhibits D, E, and G; T. Davis).

8. On [REDACTED] 2019 the Facility faxed to the [REDACTED] a corrected Form 3559, requesting the change in status of Appellant and her status of placement to be "non-permanent" retroactive to [REDACTED] 2018. (Appellant Exhibits D and G; T. Davis).

9. The Form 3559 should have been submitted to the [REDACTED] at the time Appellant began working with Facility representatives to return the Appellant back to the community in [REDACTED] 2018. (Appellant Exhibits D, E and G; T. Davis).

10. The Form 3359 and the request to change Appellant's budget retroactively is pending with the [REDACTED] (Appellant Exhibit G; T. Davis).

11. By notice dated [REDACTED] 2019, the Facility advised Appellant that it had determined to discharge her on the grounds of failure, after reasonable and appropriate notice, to pay (or have paid under Medicare, Medicaid, or private insurance) for her stay at the Facility. The discharge location is [REDACTED]

[REDACTED] [REDACTED]. (ALJ Exhibit I)

12. The Appellant remains at the Facility pending the outcome of this appeal.'

APPLICABLE LAW

A residential health care facility (also referred to in the Department of Health 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. Public Health Law Sections 2801(2)(3); 10 NYCRR Section 415.2(k).

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR Section 415.3[h][1]).

The Facility alleges the Appellant's discharge is permissible pursuant to 10 NYCRR Section 415(h)(1)(i)(b), which states in relevant part:

[T]ransfer and discharge shall be permissible when the resident has failed, after reasonable and appropriate notice, to pay for... 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...

Under the hearing procedures at 10 NYCRR Section §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under the New York State Administrative Procedures Act (SAPA) Section 306(1), 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.

DISCUSSION

The Appellant was admitted to the facility for short term rehabilitation on [REDACTED] [REDACTED] 2016 after a series of [REDACTED] surgeries. (T. [REDACTED]).

After a medical determination in [REDACTED] 2016 which stated the Appellant needed long term care, the [REDACTED] determined in [REDACTED] 2016 the amount of Appellant's NAMI to be paid to the Facility is \$ [REDACTED] per month. (Facility Exhibits 1 and 2). Due to

the admitted non-regular payments by the Appellant over the past year the Facility alleges the amount Appellant now owes the Facility is \$ [REDACTED] (Facility Exhibit 3; T. Davis; T. [REDACTED]).

However, the amount is in dispute because in [REDACTED] 2018 the Appellant started working with Facility and community care representatives to be discharged to the community (T. Eckmann). Due to this change in status a new Form 3559 should have been submitted to the [REDACTED] to recalculate Appellant's budget and her NAMI obligation. (Appellant Exhibit G). Per an email by Claudette Moore, a Medicaid Coordinator at the Facility, to [REDACTED], a [REDACTED] Welfare Examiner, dated May 16, 2019, "the goal was always to send her [Appellant] home." (Appellant Exhibit E; T. Davis).

On [REDACTED] [REDACTED] 2019 the Facility formally sent to the [REDACTED] a "corrected 3559". (Appellant Exhibit D). On the form the Facility states the Appellant's placement is to be considered "non-permanent" with a change in status date of [REDACTED] 2018. Per the Facility's Medicaid Coordinator, Teresa Davis, the matter is now before the [REDACTED] for its determination. The determination by the [REDACTED] will impact whether a corrected NAMI will be issued retroactively or not. In turn, that will impact whether there is a NAMI amount owed by Appellant to the Facility or not.

Pursuant to 10 NYCRR Section 415(h)(1)(i)(b), the Facility may appropriately discharge the Appellant for her failure to pay or have her payments made to the Facility on her behalf.

However, 10 NYCRR Section 415 (h) (i) (b) goes on to state, [s]uch transfer or discharge **shall be permissible only if the charge is not in dispute...**" (emphasis added).

The NAMI amount Appellant allegedly owes to the Facility is in dispute because the requested retroactive corrective action via the "corrected 3559" submitted by the Facility on [REDACTED], 2019 to the [REDACTED] has not yet been acted upon. The decision by [REDACTED] will be determinative as to the NAMI amounts Appellant owes, if any, to the Facility. During the periods of Appellant's stay at the Facility when she was considered "community budget" Appellant's non-permanent NAMI amount was [REDACTED] dollars a month. (Facility Exhibit 3; Appellant Exhibits F and G; T. Davis).

Until a determination as to whether Appellant should be considered "chronic care" or "community budget" is made by [REDACTED] the NAMI amount Appellant owes to the Facility is in dispute. Accordingly, the Facility has not proven that its determination to discharge the Appellant is correct. Having found the Facility has failed to prove the grounds for discharge, *i.e.*, that Appellant has failed, after reasonable and

appropriate notice, to pay for her stay at the facility, I will not address the issue of whether the discharge plan and location is appropriate.

CONCLUSION

River Ridge Living Center has not established that its determination to discharge the Appellant was correct. There is a "corrected" Form 3559 pending before the [REDACTED] [REDACTED] [REDACTED] [REDACTED] regarding retroactive reclassification of the Appellant's status to non-permanent effective [REDACTED] 2018. The decision by the [REDACTED] [REDACTED] [REDACTED] [REDACTED] will be determinative as to Appellant's NAMI assessment.

DECISION

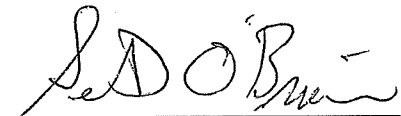
I find that the Facility has failed to prove by substantial evidence that the discharge is necessary.

The appeal by Appellant is therefore GRANTED.


Respondent Facility, River Ridge Living Center, is not authorized to discharge Appellant in accordance with the [REDACTED] 2019 Discharge Notice.

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: Albany, New York
June 7, 2019**



Sean D. O'Brien
Administrative Law Judge

To: 
c/o River Ridge Living Center
100 Sandy Drive
Amsterdam, New York 12010

Stephan E. Andersson, Esq.
Legal Aid Society of Northeastern NY
6 Market Street
Amsterdam, New York 12010

Ms. Shannon McHale, LNHA, Administrator
River Ridge Living Center, LLC
100 Sandy Drive
Amsterdam, New York 12010