



Department of Health

ANDREW M. CUOMO
Governor

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

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

December 30, 2019

CERTIFIED MAIL/RETURN RECEIPT

Vickey Johnson
Terence Cardinal Cooke
1249 5th Avenue
New York, New York 10029

██████████
c/o Terence Cardinal Cooke
1249 5th Avenue
New York, New York 10029

Amy Ebinger, Esq.
Archdiocese of New York
Office of Legal Affairs
1011 First Avenue, Suite 1150
New York, New York 10022

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

ORIGINAL

from a determination by

Terrance Cardinal Cooke Health Care Center

to transfer from a residential health care facility.

Before: Rayanne L. Babich
Administrative Law Judge

Held at: Terrance Cardinal Cooke Health Care Center
1249 Fifth Avenue
New York, NY 10029

Parties: ██████████, Appellant
c/o Terrance Cardinal Cooke Health Care Center
1249 Fifth Avenue
New York, NY 10029

Terrance Cardinal Cooke Health Care Center
1249 Fifth Avenue
New York, NY 10029

No attorney present¹

Through notice dated ██████████ 2019, Terrance Cardinal Cooke Health Care Center (Facility), a residential health care facility subject to Article 28 of New York Public Health Law (PHL), sought to transfer ██████████ (Appellant) from the Facility. The Appellant requested an appeal with the New York State Department of Health pursuant to Title 10 (Health) of the

¹ Amy Ebinger, Esq. was shown to be the attorney for the Facility through the Archdiocese and was present for pre-hearing telephone conferences; but was not present at the hearing. The Facility chose to move forward without the attorney present.

Official Compilation of Codes, Rules and Regulations of the State of New York. (NYCRR) 415.3(i).

The hearing was held on December 11, 2019 and in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulation (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR. An audio recording was made of the hearing.

RECORD

ALJ Exhibits: I – Letter with Notice of Hearing
II – Notice of Discharge dated [REDACTED], 2019

Facility Exhibits: 1 – Account Correspondence for [REDACTED], 2018 – [REDACTED] 2019
2 – Invoice with amounts due from resident dated [REDACTED] 2019
3 – Letter from Vickey Johnson, Director of Patient Accounts to Appellant dated [REDACTED], 2019

Appellant Exhibits: None

Facility Witnesses: Vickey Johnson, Director of Patient Accounts
Rayna Taylor-Terry, Director of Social Work (by telephone)
Linda Annor, Nurse Manager
Sheniqua Gregg, Patient Account Specialist

Appellant Witnesses: Appellant testified on his own behalf

FINDINGS OF FACT

The Findings of Fact were made after considering all testimony, statements, and documents admitted into evidence. The items that appear in parentheses following the findings indicate exhibits (Ex), statements (S), or testimony (T) in evidence. In instances where any evidence contradicted other evidence, it was considered by the ALJ and rejected.

1. Appellant was admitted to the Facility on [REDACTED] 2018. (S Johnson; Ex 3)

2. At the time of admission through [REDACTED] 2018, the cost of Appellant's care was covered through a [REDACTED] insurance policy with a copay of \$ [REDACTED] per day. (S Johnson; Ex 3)
3. On or about [REDACTED], 2018, the Facility submitted an application for Medicaid on Appellant's behalf, which was approved on or about [REDACTED], 2018 with a \$0.00 Net Available Monthly Income (NAMI). (S Johnson; Ex 3)
4. The Facility submitted a Medicaid recertification on Appellant's behalf on or about [REDACTED], 2018. (S Johnson; Ex 3)
5. Medicaid approved the recertification on or about [REDACTED] 2019 showing that Appellant's NAMI was now assessed as \$ [REDACTED] per month as of [REDACTED], 2019. (S Johnson; Ex 1, 3)
6. The NAMI increase was attributed to Appellant's receipt of Social Security Disability and the Appellant testified his benefit is the approximate amount of "\$ [REDACTED] per month. (S Johnson; T Appellant; Ex 3)
7. On or about the twentieth day of each month, beginning in [REDACTED] 2019, the Facility delivered to Appellant an invoice showing his monthly billed charge of \$ [REDACTED] (S Johnson; S Gregg; Ex 1).
8. Appellant does not have any outstanding charges related to his [REDACTED] copay as these were retroactively covered by Medicaid. (S Johnson)
9. To date, the total amount of charges due to the Facility from Appellant is \$ [REDACTED] (S Johnson; Ex 2)

10. On [REDACTED] 2019, a Notice of Discharge was issued to Appellant with a discharge date of [REDACTED], 2019 and a discharge location as [REDACTED] Nursing Home located in [REDACTED] (ALJ II)
11. The discharge location is another skilled nursing facility that is a “sister facility” to the Appellant’s current facility and can provide for Appellant’s needs. (S Taylor-Terry)
12. Subsequent to the issuance of the Notice of Discharge and this appeal, the Facility made attempts to refer patient to three other skilled nursing facilities located in the same general area as the Facility, including: [REDACTED] Nursing Home, [REDACTED] Nursing Home and [REDACTED] Nursing and Rehab. Appellant was not accepted at any of these facilities. (S Taylor-Terry)
13. Facility has made several attempts to obtain payment or discuss a plan for payment but Appellant has not been willing to participate in these discussions and has not made any payment toward the billed NAMI charges. (S Johnson; S Gregg; T Appellant; Ex 1, 3)
14. Appellant is not able to transfer to the domicile of his [REDACTED] as it is not accessible and will not accommodate his wheelchair. (T Annor)

ISSUE

Whether the facility has met its burden to show that its determination to transfer Appellant was proper and whether the discharge plan is safe and appropriate?

APPLICABLE LAW

A residential health care facility, or nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require

hospitalization. Public Health Law §2801 (2)-(3); 10 NYCRR 415.2(k). Under 10 NYCRR 415.3(i)(1)(b), a resident may be discharged when he 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.” In addition, this section provides that “[s]uch 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.” 415.3(i)(1)(b). Furthermore, the Facility has the burden to prove that the discharge plan and location is safe and appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

Grounds for Transfer

The Facility has met its burden to show its determination to transfer Appellant was proper under 10 NYCRR 415.3(i)(1)(b). The Appellant was admitted to the Facility on [REDACTED] 2018 with private insurance covering the cost of care through [REDACTED] 2018, less a \$ [REDACTED] per day copay. (S Johnson) The Facility applied for Medicaid on Appellant’s behalf and when approved in [REDACTED] 2018, Medicaid retroactively covered the cost of Appellant’s outstanding copay charges. (S Johnson) At that time, Appellant’s Medicaid covered the full cost of care with no assessed out of pocket costs for Appellant. (S Johnson) In [REDACTED] 2018, the Facility completed Medicaid recertification paperwork on Appellant’s behalf at which time he was assessed with a Net Adjusted Monthly Income (NAMI) of \$ [REDACTED] per month to begin [REDACTED] 2019. (S Johnson) It had appeared, and the Appellant confirms, that he was now in receipt of Social Security Disability benefits and this increase in income led to the NAMI applied to Appellant’s care. (S Johnson; T Appellant) Patient Accounts representatives, Ms. Vickey Johnson and Ms. Sheniqua Gregg, both

stated that beginning on or about [REDACTED] 2019, an invoice was hand delivered to Appellant around the twentieth of each month. (S Johnson; S Gregg) Additionally, Ms. Gregg stated that Appellant declined to engage in discussions each month regarding a plan for payment. (S Gregg) At the time of hearing, Appellant's current balance based on NAMI charges is \$ [REDACTED] and he has not made any payment toward these charges. (S Johnson) The Appellant does not dispute these billed charges and testifies that he believes the current balance to be correct. (T Appellant) The assistance provided by the Facility in obtaining Medicaid and the timely, monthly delivery of charges billed placed the Appellant on reasonable and appropriate notice that he would be financially responsible for these amounts. The Appellant's Medicaid benefit is still active and it is expected the monthly NAMI assessment may increase in 2020. (S Johnson) When asked whether he would be willing to begin paying his monthly charges today, the Appellant testified that he "can see what I can try to come up with." Appellant also confirms that his Social Security Disability benefit is "\$ [REDACTED] or something like that" but that he believes what he is receiving to be about the same about as his current NAMI charge because he expects the Facility would take his entire benefit aside from \$ [REDACTED] per month. (T Appellant) As there is no dispute as to the amount of the charges, no pending appeal of benefits, and it has been shown that the Appellant has the funds available but has chosen not to pay, the Facility properly sought to transfer Appellant from its care.

The Facility offered that the Appellant has chosen to use his funds toward the living expenses of his [REDACTED] and that there was no mention of [REDACTED] support prior to Appellant's receipt of disability income. (S Taylor-Terry) Whether this is accurate is not as persuasive as the fact that the Appellant has made no efforts toward the payment of any of these charges, or engaged with staff in developing a plan despite the fact that he was notified of charges at the time of

Medicaid's determination (Ex 1) and monthly thereafter. Appellant expresses his concern that "everything is about money" and "as long as you pay, you good." This does not, however, negate the fact that the Appellant is financially responsible for his portion of his care as assessed by Medicaid, and he has refused to pay.

Discharge Plan

The Facility has also met its burden to show that the discharge plan and location is safe and appropriate. The proposed discharge location is the Ferncliff Nursing Home, located in Rhinebeck, New York. (ALJ II) Neither party disputes that the Appellant continues to require skilled services provided by a facility as defined in New York Public Health Law §2801 (2)-(3), however, Appellant opposes the discharge plan due to the location of the facility. (T Appellant) Although Appellant and his care team had engaged in discussions regarding his return to the community in the home of his [REDACTED] it was determined that the residence was not accessible to accommodate Appellant's [REDACTED] and mobility equipment. (T Annor) Ms. Linda Annor, RN, who serves as the nurse manager for Appellant's unit, testified that the care team also considered utilizing [REDACTED] to improve mobility, but the Appellant's [REDACTED] made it difficult for the [REDACTED] to fit properly. (T Annor) Ms. Annor also testified that she made unsuccessful attempts to contact Appellant's spouse until his [REDACTED] was visiting Appellant in the Facility. (T Annor) At that time, further conversations led Nurse Annor to believe that Appellant and his [REDACTED] expected the Facility staff to locate a new, accessible apartment for both Appellant and his [REDACTED] (T Annor) However, it was presented to Nurse Annor that obtaining a new apartment on their own was not a priority for either the Appellant or his [REDACTED] (T Annor)

After the Notice of Discharge was issued to Appellant, the Facility made attempts to locate an alternative placement in the same geographical area as the Facility and as requested by the Appellant. (S Taylor-Terry) Ms. Rayna Taylor-Terry, the Director of Social Work, appeared by telephone and stated that Appellant was not accepted by any of the three (3) local facilities to which she referred, including: Amsterdam Nursing Home, Northern Manhattan Nursing Home and Harlem Center for Nursing and Rehabilitation. (S Taylor-Terry) Ms. Taylor-Terry stated that none of these three facilities had long-term beds available for Appellant, however, the original discharge location is still willing to accept Appellant. (S Taylor-Terry)

The Appellant acknowledged that a transfer to his [REDACTED] residence is not feasible at this time, but that he could “work on it.” (T Appellant) Appellant has not identified any other facilities in the area in which he would prefer to reside but he would “check with his people.” (T Appellant) Given that Appellant has not made efforts toward paying the NAMI charges, it does not seem credible that Appellant will be able to locate an alternative facility. The proposed discharge location, although a distance from his current location, will be able to safely meet Appellant’s needs. The narrow likelihood that an accepting facility could be identified in a reasonable amount of time combined with the past [REDACTED] months in which the Appellant has declined to make any payment to the Facility would place an undue burden on the facility when there is a safe and adequate facility that can accept Appellant. When asked what Appellant would like to happen, he stated that he would like to be in a place where he can “adequately use the bathroom and work on this [REDACTED] and get medications.” The proposed location will be able to address those needs and provide an adequate environment for Appellant. Therefore, the proposed discharge plan is safe and appropriate.

ORDER

Terrance Cardinal Cooke Health Care Center has established that its reasons for discharge are proper and that its discharge plan is appropriate under 10 NYCRR 415.3(i) and the Appellant's appeal is DENIED.

1. The Facility is authorized to transfer the Appellant in accordance with the plan on the Notice of Discharge dated [REDACTED], 2019.
2. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules.



Rayanne L. Babich
Administrative Law Judge

Dated: December 30, 2019
Albany, New York