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**Department
of Health**

ANDREW M. CUOMO
Governor

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

LISA PINO, M.A., J.D.
Executive Deputy Commissioner

July 29, 2021

CERTIFIED MAIL/RETURN RECEIPT

■■■■ ■■■■
c/o Eastchester Rehabilitation
& Health Care Center
2700 Eastchester Road
Bronx, New York 10469

Horacio Rodriguez
Eastchester Rehabilitation
& Health Care Center
2700 Eastchester Road
Bronx, New York 10469

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 :

Eastchester Rehabilitation & Health Care Center, :

Respondent, :

to discharge him from a residential health care facility. :

COPY

DECISION

Hearing Before:

Ann Gayle
Administrative Law Judge

Held:

Via Cisco Webex

Hearing Date:

June 29, 2021 (rescheduled from June 24, 2021)
Record closed July 27, 2021

Parties:

Eastchester Rehabilitation & Health Care Center
By: Horacio Rodriguez

By: ██████████

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 Eastchester Rehabilitation & Health Care Center (“Eastchester,” “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(i). Respondent determined to discharge ██████████ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(i)(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 and a hearing on that appeal was held. Pursuant to §415.3(i)(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.

A recording of the hearing was made part of the record. Appellant appeared and testified on his own behalf. Appellant’s ██████████ represented and assisted Appellant and testified. The following witnesses testified for Respondent: Social Worker Horacio Rodriguez, Medicaid Coordinator Felicita Rivera, and Administrator Nathaniel Gordon. Social Work Director Inez Green also participated.

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
- II: █, 2021 letter

Facility:

- 1: Budget letters and bills
- 2: Social Services progress notes and Cognitive Evaluation

Appellant:

- A: Page 5 of Medicaid letter – two views
- B: May 21, 2021 Fair Hearing Request
- C: Fair Hearing receipt

ISSUE

Has Eastchester Rehabilitation & Health Care Center established that the discharge is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (“T”) and exhibits (“Ex”) found persuasive in arriving at a particular finding.

- 1. Respondent, Eastchester Rehabilitation & Health Care Center, is a residential health care facility located in Bronx, New York. (Ex I; Ex 1)
- 2. Appellant, █ █ age █, was admitted to the Facility in █ 2018. The local Medicaid office established Appellant’s NAMI (Net Available Monthly Income) to be \$ █ per month effective █ 2019 (Ex 1, page 2), and \$ █ per month effective █ 2020 (Ex 1, page 6). Respondent’s invoice for the period █/19 to █/21 (Ex 1, pages 7-8)

██████████ Eastchester

not made payment since a NAMI budget was established. Respondent has also proven that

██████████ Assisted Living Facility is an appropriate discharge location for Appellant.

DECISION

I find that the Facility has proved that the discharge is necessary and the discharge location is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Eastchester Rehabilitation & Health Care Center, is authorized to discharge Appellant in accordance with the ██████████ 2021 Transfer/Discharge Notice. The discharge shall occur no sooner than ██████████ 2021, in order to give the parties the opportunity to discuss and reach a payment agreement, and to ascertain ██████████ will accept Appellant involuntarily. Appellant may leave the Facility sooner than ██████████, 2021, if he wishes to be discharged to ██████████ if another location suitable and acceptable to him is secured prior to that date, 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
July 28, 2021

Ann Gayle

Ann Gayle
Administrative Law Judge

TO: ██████████ ██████████
c/o Eastchester Rehabilitation & Health Care Center
2700 Eastchester Road
Bronx, New York 10469

Horacio Rodriguez
Eastchester Rehabilitation & Health Care Center
2700 Eastchester Road
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