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# Department of Health

KATHY HOCHUL  
Governor

MARY T. BASSETT, M.D., M.P.H.  
Commissioner

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

December 12, 2022

## CERTIFIED MAIL/RETURN RECEIPT

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100 William Street, 6<sup>th</sup> Floor  
New York, New York 10038

**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,

Natalie J. Bordeaux  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB: nm  
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

**Hudson Pointe at Riverdale Center  
for Nursing and Rehabilitation**

Respondent,

to discharge her from a residential  
health care facility.

COPY

**DECISION**

Hearing Before:

Natalie J. Bordeaux  
Administrative Law Judge

Held via:

Cisco WebEx videoconference

Hearing Date:

December 7, 2022

Parties:

Hudson Pointe at Riverdale Center  
for Nursing and Rehabilitation  
By: Scott O. Frycek, Esq.  
Lewis Johs Avallone Aviles, LLP  
1377 Motor Parkway, Suite 400  
Islandia, New York 11749

██████████

By: Tanya Kessler, Esq.  
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100 William Street, 6<sup>th</sup> Floor  
New York, New York 10038

**JURISDICTION**

Hudson Pointe at Riverdale Center for Nursing and Rehabilitation (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge ██████████ ██████████ (the Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(i).

**HEARING RECORD**

Facility witnesses: Emanuel Lichtik, Administrator  
Dr. Robert Samaniego, Attending Physician  
Yaneika Olivo, Director of Social Service

Facility exhibits: 1-13

Appellant witnesses: ██████████ ██████████ Appellant  
Maureen Sammon, Medicaid Coordinator, Hudson Pointe

Appellant exhibits: E-G

The hearing notice and accompanying cover letter were marked as ALJ Exhibit I. A digital recording of the proceeding was made (6:11:46 in duration<sup>1</sup>).

**ISSUES**

Has Hudson Pointe at Riverdale Center for Nursing and Rehabilitation established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

**FINDINGS OF FACT**

1. The Appellant is a ██████-year-old female who was admitted to the Facility on ██████████, 2019 after a lengthy hospital stay. (Exhibits 1, E.)

<sup>1</sup> Due to data size, the recording is divided into two files. ██████████ contains the first six hours, three minutes, and 58 seconds. ██████████ contains the subsequent and final seven minutes and 48 seconds. This decision refers only to testimony in the file entitled "██████████"

2. The Appellant is diagnosed with [REDACTED]  
[REDACTED]  
[REDACTED]. (Exhibits 1, 11.)
3. The Appellant ambulates with a walker or relies upon a wheelchair for ambulation. She requires the assistance of another person for transfers, locomotion, dressing, toilet use and personal hygiene. (Exhibit 11.)
4. The Appellant is a recipient of both Medicare and Medicaid. (Exhibits 1, 13.)
5. On [REDACTED], 2022, the [REDACTED] County Department of Social Services (DSS) determined to adjust the Appellant's Medicaid eligibility from an outpatient to chronic care, retroactive to [REDACTED] 2021 to enable her long-term placement at a nursing home. (Exhibit 13.)
6. Pursuant to the [REDACTED] notices from DSS, the Appellant's eligibility for Medicaid includes a requirement that she remit a certain amount of her income (net available income or "NAMI") to the Facility for each month from [REDACTED] 2021 onward to be paid toward the cost of her stay. (Exhibits 1, 13.)
7. On [REDACTED] and [REDACTED] 2022, Yaneika Olivo, Director of Social Services, attempted to explain the Appellant's financial obligation but the Appellant ignored her. (Exhibit 5.)
8. By notice dated [REDACTED], 2022, the Facility advised the Appellant of its determination to discharge her, effective [REDACTED], 2022, because her needs cannot be met at the Facility and also because she has failed, after reasonable and appropriate notice, to pay for the cost of her nursing home stay. The notice informed the Appellant that she would be discharged to [REDACTED]

██████████ a drop-in shelter operated by the ██████████ Department of Homeless Services (DHS) located at ██████████. (Exhibit 2.)

9. On ██████████, 2022, the Appellant was presented an invoice in which she was informed that she owed the Facility over \$ ██████████ for unpaid NAMI. (Exhibit 13.)

10. On ██████████ 2022, the Appellant requested this hearing. (ALJ Exhibit I.)

**APPLICABLE LAW**

A residential health care facility (also referred to in the regulations as a nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. PHL §§ 2801(2)-(3); 10 NYCRR § 415.2(k).

Regulations at 10 NYCRR § 415.3(i) describe the transfer and discharge rights of residential health care facility residents. They state, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility.

(a) The resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that:

(1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;

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(b) 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... 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 residential health care facility has the burden of proving that the discharge is necessary and that the discharge plan is appropriate. 10 NYCRR § 415.3(i)(2)(iii); State Administrative Procedure Act § 306(1).

### DISCUSSION

This hearing was requested to contest both grounds for discharge set forth in the Facility's [REDACTED], 2022 discharge notice, as well as the proposed discharge plan. For reasons set forth below, the Facility has not met its burden of establishing either stated basis for discharge. On the issue of the Appellant's purported failure to pay for the cost of her stay, the record fails to establish that the Appellant was provided reasonable and appropriate notice of her financial obligation. By two DSS notices dated [REDACTED], 2022, the Facility was advised that the Appellant's Medicaid eligibility and corresponding budgeting was adjusted, retroactive to [REDACTED] 2021, to reflect her long-term placement at a nursing home, thereby resulting in a NAMI obligation. Ms. Sammon, the Facility's Medicaid Coordinator, received these notices several days later. Director of Social Service Yaneika Olivo attempted to discuss payment with the Appellant on [REDACTED] and [REDACTED]. She was accompanied by Ms. Sammon on [REDACTED]. (Exhibit 5.)

The hearing record contains no evidence that the Appellant was apprised of any personal financial obligation for the cost of her stay before [REDACTED]. The first invoice provided to the Appellant is dated [REDACTED] two days after the Facility issued the discharge notice to the Appellant alleging non-payment. (Exhibit 13.) Within a week after receiving the invoice, the Appellant agreed to have her Social Security benefits made payable directly to the Facility. Because her [REDACTED] retains Power of Attorney over her financial affairs, she is unable to access

her bank account to verify its balance and transfer any additional sums to the Facility. The Appellant is working with Adult Protective Services to assist her with revoking her legal status as Power of Attorney in order to address the outstanding amount and regain control of her finances. At this time, the only funds available to the Appellant are being paid to the Facility. She is paying current charges and is actively pursuing efforts to secure the additional funds to catch up on arrears which have taken her by surprise.

The , 2022 discharge notice also informed the Appellant that she was being discharged, in part, for her “welfare” because her needs cannot be met at the Facility. (Exhibit 2.) The Facility offered no documentation from a physician describing the Appellant’s needs which could not be met, the efforts made to meet those needs, and the specific services the discharge location will provide to meet the needs which the Facility is unable to meet. 42 CFR § 483.15(c)(2); 10 NYCRR §§ 415.3(i)(1)(ii) and (iv); *see also* Department “Dear Administrator” Letter dated August 20, 2019 (DAL-NH 19-07) entitled “Notice of Transfer or Discharge and Permitting Residents to Return”.

Although it is the Facility’s position that the Appellant has no need for care provided by a nursing home, that ground for discharge was not stated in the , 2022 discharge notice. The discharge notice asserts that the Facility cannot meet the Appellant’s needs. In support of its stated grounds, the Facility claims that the Appellant has refused care and hinders coordination of care by refusing to apprise medical staff of the names of her providers in the community. These assertions not supported by the Facility’s own records. (Exhibits 4, 5, 8, 9.)

The Appellant explained that she had previously refused wound care on days in which her wounds were being treated by a provider outside of the confines of the facility. After she no longer received such outpatient care, she has accepted wound care at the Facility more



frequently. She also receives Facility assistance with ADLs, including bathing daily after use of her bed pan in order to [REDACTED] on her [REDACTED], and medication management for administration of over 20 medications. (Exhibits 5, 6, 9, 11, E, F.) The Appellant's [REDACTED] must be carefully applied under the supervision of a nurse to avoid fatal consequences. Her [REDACTED] is monitored before she utilizes her prescribed [REDACTED] and her blood pressure must be read before she is given [REDACTED]. (Exhibits E, F.) For all of these needs, the Appellant is fully accepting of Facility care.

Although not central to this case, given the Facility's failure to establish a basis for its discharge determination, the Facility has also failed to establish that its discharge plan, a drop-in shelter operated by DHS, is appropriate. The Appellant has a demonstrated need for assistance with ADLs, wound care, monitoring of blood pressure before authorizing use of medication, monitoring of [REDACTED] before authorizing use of medication via [REDACTED] and nursing supervision of the administration of her [REDACTED]. The Facility's submission to DHS in preparation for the Appellant's discharge to the shelter system acknowledges that the Appellant would require at least 12 weeks of nursing service. (Exhibit E.) The proposed discharge plan fails to address the Appellant's medical needs and how these needs will be met after discharge. 10 NYCRR § 415.3(i)(1)(vi). The Facility's determination is not sustained.

**DECISION**

Hudson Pointe at Riverdale Center for Nursing and Rehabilitation has not established that its determination to discharge the Appellant is correct and that the discharge plan is appropriate.

Dated: December 12, 2022  
Menands, New York



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Natalie J. Bordeaux  
Administrative Law Judge