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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

July 14, 2023

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Far Rockaway Center for Rehabilitation
and Nursing
1311 Virginia Street
Far Rockaway, New York 11691

Sol Blumenfeld, NHA
Far Rockaway Center for Rehabilitation
and Nursing
1311 Virginia Street
Far Rockaway, New York 11691

[REDACTED]

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

COPY

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

██████████ ██████████ :

Appellant, :

from a determination by :
FAR ROCKAWAY CENTER FOR REHABILITATION AND :
NURSING :

DECISION
DOCKET#6042

Respondent, :

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

-----X

Hearing Before: Sean D. O'Brien
Administrative Law Judge

Held via WEB EX Video Conference

Hearing Date: July 12, 2023

Parties: Far Rockaway Center for Rehab & Nursing
1311 Virginia Street
Far Rockaway, New York 11691
By: Sol Blumenfeld, Administrator

██████████ ██████████, Pro se

JURISDICTION

By notice dated [REDACTED] [REDACTED] 2023, Far Rockaway Center for Rehabilitation and Nursing (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [REDACTED] [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(i).

HEARING RECORD

ALJ Exhibits: I (Notice of Hearing and the Facility Discharge Notice attached.)

Facility Exhibits: A-G

Facility Witnesses: Deidre Daniels, Director of Social Work
Sol Blumenfeld, Administrator
Rena Brody, Finance Director

Appellant's Witnesses: [REDACTED]

A digital recording of the hearing was made via WEB EX.

ISSUE

Has the Facility met its burden of the proving the Appellant has failed to pay for his care and stay at the Facility and is the discharge plan appropriate for the Appellant?

FINDINGS OF FACT

Citations in parentheses refer to testimony (T) of witnesses and exhibits (Exhibit) found persuasive in arriving at a particular finding.

1. The Appellant is [REDACTED]-years old with diagnoses including [REDACTED] [REDACTED]. The Appellant was admitted to the Facility on [REDACTED] 2022, for long term placement. (Exhibit A; T. Daniels 11:50, T. Blumenfeld 21:06, 30:00.)

2. The Appellant has not paid his Net Available Monthly Income (NAMI) for his stay and care at the Facility. The Appellant's NAMI amount of [REDACTED] per month was set by the [REDACTED] County Department of Social Services (DSS). No appeal of the set NAMI is pending at DSS. (Exhibit C; T. Blumenfeld 22:53, T. Brody 28:01.)

3. The Appellant now owes [REDACTED] to the Facility in back NAMI payments. (Exhibits D, F, G; T. Blumenfeld 55:34.)

4. The Appellant still requires residential health care, and the proposed discharge location is the only residential

health care facility willing to take the Appellant due to the Appellant's failure to pay the outstanding balance owed to the Facility. (Exhibits B, F; T Daniels 12:11.)

5. By notice dated [REDACTED] [REDACTED] 2023, the Facility advised Appellant that it had determined to discharge the Appellant on the grounds of failure to pay the Facility after being given reasonable notice on more than one occasion. The Appellant is aware of his financial obligations to the Facility. The discharge location is the [REDACTED]

[REDACTED] [REDACTED] [REDACTED]. (Exhibits B, D, F, G; T Daniels 12:11, T. Blumenfeld 22:53, T. Brody 32:59.)

6. 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[i][1]).

The Facility alleges the Appellant's discharge is permissible pursuant to 10 NYCRR Section 415(i)(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(i)(2)(ii), the Facility bears the burden to prove a discharge necessary and the discharge plan is 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.

DISCUSSION

The Appellant was admitted to the Facility for long term placement on [REDACTED] [REDACTED] 2022, with diagnoses including [REDACTED] [REDACTED]. (Exhibit A.)

The Appellant owes the Facility [REDACTED] in back NAMI amounts for his stay and care at the Facility. (Exhibits D, F, G; T. Blumenfeld 55:34.) On several occasions, the Facility staff notified the Appellant in person and in writing of his responsibility to pay the NAMI amount owed. In addition, the Facility staff notified the Appellant's [REDACTED] and [REDACTED] of the debt. (Exhibit F; T. Blumenfeld 30:55, 55:34.) The Appellant is aware of his financial obligations to the Facility and of his responsibility to pay the NAMI amount set by DSS. His care and stay are currently being paid by Medicaid and the Appellant's Social Security. Although the Appellant asserts that his pension should not be considered as part of the NAMI since he is not long term care, there is no appeal pending before DSS concerning the NAMI amount. (Exhibits A, C, D, F, G; T. Brody 28:01.)

The Facility argues that the Appellant is a long term care resident based on his physical condition and needs. The Facility accepted the resident for long term care and the Appellant lived in residential health care facilities even prior to his admission

to the Facility. The needs of the Appellant are those of a long term care resident. (T. Blumenfeld 23:17, 30:26.) The Facility has met its burden of establishing valid grounds for discharge. 10 NYCRR Section 415.3(h)(1)(i)(b).

The Appellant still needs the medical care of a residential health care facility, and the proposed discharge location is such a facility. The Facility attempted to find a closer facility to the Appellant's current location. (Exhibits B, F.) However, due to the Appellant's continuing failure to pay, no other residential health care facility closer to the Appellant's current location is willing to accept him. (T. Daniels 6:48.)

CONCLUSION

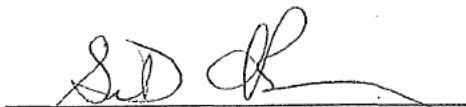
Far Rockaway Center for Rehabilitation and Nursing has established that its determination to discharge/transfer the Appellant is correct and the proposed discharge/transfer location is appropriate.

DECISION

The appeal by Appellant is therefore DENIED.


Far Rockaway Center for Rehabilitation and Nursing is authorized to discharge the Appellant in accordance with the [REDACTED] 2023, Transfer/ 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
July 14, 2023


Sean D. O'Brien
Administrative Law Judge

To:

Far Rockaway Center for Rehab and Nursing
Sol Blumenfeld, Nursing Home Administrator
1311 Virginia Street
Far Rockaway, New York 11691


c/o Far Rockaway Center for Rehab and Nursing
1311 Virginia Street
Far Rockaway, New York 11691

