



# 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 16, 2019

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
Silvercrest Center for Nursing  
and Rehabilitation  
144-45 87<sup>th</sup> Avenue  
Briarwood, New York 11435

Ms. Maureen Peters, Director of Social Work  
Silvercrest Center for Nursing  
and Rehabilitation  
144-45 87<sup>th</sup> Avenue  
Briarwood, New York 11435

**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

-----X  
 In the Matter of an Appeal, pursuant to :  
 10 NYCRR § 415.3, by :  
 [REDACTED] :  
 :  
 Appellant, :  
 :  
 from a determination by :  
 :  
 Silvercrest Center for Nursing :  
 and Rehabilitation :  
 Respondent, :  
 :  
 to discharge her from a residential health :  
 care facility :  
 -----X

ORIGINAL

DECISION

A Notice of Transfer/Discharge dated [REDACTED] 2019 was issued to [REDACTED] (Appellant) by Silvercrest Center for Nursing and Rehabilitation (Facility). The Appellant appealed the Facility's proposed discharge. On October 17, 2019, a hearing was held before Dawn MacKillop-Soller, Administrative Law Judge (ALJ), at Silvercrest Center for Nursing and Rehabilitation, 144-45 87<sup>th</sup> Street, Briarwood, New York. Evidence was received (ALJ I and Facility 1-7<sup>1</sup>). An audio recording of the hearing was made.

The Appellant appeared and represented herself. The Facility was represented by Maureen Peters, Director of Social Work. Kim Cheek, Medicaid Coordinator; Dameka Bell, occupational therapist; Mohammad Syed, Director of Rehabilitation; and Ms. Peters testified

<sup>1</sup> Exhibit 7 is [REDACTED] home health care report from the evaluation of the Appellant for home health care services on [REDACTED] 2019. The Facility provided it to the Appellant and the ALJ on December 10, 2019.

on behalf of the Facility. The Appellant and her [REDACTED] [REDACTED] testified for the Appellant. The record remained open until [REDACTED] 2019 on the agreement of the parties for submission of the Appellant's Medicaid application.

#### Issues

Has the Facility met its burden of proving that the Appellant's health has improved sufficiently so she no longer needs skilled nursing home care, and that its discharge plan is appropriate?

#### Findings of Fact

1. Silvercrest Center for Nursing and Rehabilitation, is a residential health care facility, in Briarwood, New York. The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED] 2018 following hospital treatment for an [REDACTED], which has since resolved. Her medical conditions include [REDACTED] [REDACTED] [REDACTED]. She has no cognitive limitations, but she requires a wheelchair and full-time assistance to complete activities of daily living. [Exhibits 1 and 3; Recording @ 4:02; (2)2:10-3:30; (2)4:37-4:55; (2)7:11-7:44, (2)11:38-12:27, (2)13:38.]

2. The Appellant's daily oral medications include [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] She also requires [REDACTED] for her [REDACTED] [Exhibit 6.]

3. In [REDACTED] 2019, the Facility's rehabilitation team discharged the Appellant, who has [REDACTED] limited range of motion to her [REDACTED] and [REDACTED] from occupational and physical therapies because she has

reached her maximum level of improvement. [Recording @ (2)1:47, (2)7:54.]

4. The Appellant's stay at the nursing home was covered under Medicare until [REDACTED] of 2019. In [REDACTED] of 2019, in anticipation of the expiring coverage, the Facility submitted a Medicaid application on the Appellant's behalf to determine her eligibility. The application was incomplete because the Appellant refused to sign it or disclose any of her bank account information. [Exhibit 4; Recording @ (3)6:55.]

5. On [REDACTED] [REDACTED] 2019, Medicaid denied the Appellant's application due to her failure to provide resource documentation. Medicaid also reported that the Appellant had excess resources, which included funds deposited in various bank accounts totaling approximately \$ [REDACTED] [Exhibit 4; Recording @ (2)19:55-20:59.]

6. Between [REDACTED] and [REDACTED] of 2019, the Facility's staff made many efforts to discuss with the Appellant the outstanding bill owed to the nursing home and provided her with copies of invoices. The Appellant has failed to pay and continues to refuse to pay the Facility for her nursing home care. [Exhibit 4.]

7. By notice dated [REDACTED] [REDACTED] 2019, the Facility advised the Appellant that it had determined to discharge her on [REDACTED] [REDACTED] 2019, on the ground that she has failed, after reasonable and appropriate notice, to pay for her nursing home stay. [Exhibit ALJ I.]

8. On [REDACTED] [REDACTED] 2019, on the agreement of the Appellant, the Facility re-submitted her Medicaid application in a further attempt to avoid her discharge. [Recording @ (3)5:14.]

9. On [REDACTED] [REDACTED], 2019, Medicaid requested the Appellant produce withdrawal slips and bank statements to document a \$ [REDACTED] deposit she made on [REDACTED], 2019 and two withdrawals of [REDACTED] and \$ [REDACTED] on [REDACTED] [REDACTED], 2019. The Facility made multiple attempts to discuss with the Appellant the importance of submitting this financial documentation, but she never produced it. [Recording @ 1:28:40; (2)2:45-3:02; (2)3:26.]

10. The Facility's staff also discussed with the Appellant that under Medicaid, she would have a monthly contribution or "net available monthly income" (NAMI) of \$ [REDACTED] from her social security and that her bank account funds would constitute excess resources because they exceed the maximum allowable bank account balance. [Recording @ (2)16:25-16:55; (2)21:24; (2)26:53-27:19; (2)27:39.]

11. On [REDACTED] 2019, the Appellant's Medicaid application was still incomplete due to the Appellant's failure to produce banking records. The Appellant continues to refuse to produce them. For this reason, her eligibility under Medicaid cannot be determined. [Exhibit 3; Recording @ (2)2:45; 4:37.]

12. Although the Appellant knows the whereabouts of the \$ [REDACTED] she withdrew from her bank accounts and can access those funds because they are with "a friend," she refuses to cooperate

with the Facility to obtain them. [Recording @ 3:26; 4:02; (2)3:02-3:16; (2)3:16; (2)21:24.]

13. As of [REDACTED], 2019, the balance owed by the Appellant to the Facility for her nursing home care was \$ [REDACTED] [Recording @ (2)27:12.]

14. The Facility's proposed discharge plan is to transfer the Appellant to [REDACTED] [REDACTED] [REDACTED], a motel located at [REDACTED] [REDACTED]. [Exhibits ALJ I and 3.]

15. The Facility's care team and medical doctor unanimously agree that the Appellant's medical needs can be met at the motel and her placement there is safe and appropriate so long as a portable Hoyer lift and home health care services 24 hours per day/seven days per week are in place prior to the transfer. They also agree that a safe discharge to the motel will require a wheelchair accessible, first-floor living space with no steps, an arrangement confirmed as available at that location. [Exhibits 3 and 7; Recording @ (2)7:54; (2)8:21; (2)9:37; (2)10:51; (2)16:19; (2)19:44.]

16. The Appellant opposes the discharge plan and wants to stay at the Facility, but she continues to refuse to pay for the cost of her care even though funds are actually available to her. She owns a [REDACTED], but this housing option is no longer appropriate because it is located on the [REDACTED] floor of a building without an elevator. [Recording @ 12:25; (2)6:30.]

Applicable Law

1. The Facility has the burden of proving that the "discharge or transfer is/was necessary and the discharge plan appropriate." 10 NYCRR 415.3(i)(2)(iii)(b).

2. 10 NYCRR 415.3(i)(1)(i)(b), 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.

Discussion

The Facility met its burden of establishing its ground for discharge under 10 NYCRR 415.3(i)(1)(i)(b). Discharge is permissible because the Appellant has received reasonable and appropriate notice, yet she continues to refuse to pay for her nursing home stay even though "funds for payment are actually available." 10 NYCRR 415.3(i)(1)(i)(b). The Appellant admits to the availability of the [REDACTED] she withdrew from her bank accounts, which is nearly twice the amount of her current bill, but she refuses to make those funds available to pay the \$ [REDACTED] owed to the Facility or to cooperate with the Facility's efforts to reach an agreement to resolve this

debt. Although she has begun to pay over her \$ [REDACTED] in monthly social security income, this amount does not meet her current charges. As a result, her balance due continues to increase by [REDACTED] [REDACTED] dollars each month. She refuses to pay this bill and refuses to cooperate in completing a Medicaid application. [Recording @ (2)26:53-27:53.]

The appropriateness of the discharge plan is a more complicated issue. The Facility's proposed discharge plan is to [REDACTED] [REDACTED] [REDACTED], a motel. The Facility's rehabilitation and medical staff agree that due to the severity of the Appellant's [REDACTED] [REDACTED] a safe discharge to the motel will require 24 hours/seven days per week of home health care services. They also agree that she requires a portable Hoyer lift in the motel room for all transfers, as well as continuous assistance with operating her wheelchair, preparing meals and managing her medications. [Recording @ (2)2:10-7:11.]

The location of the motel is not far from the Appellant's [REDACTED] and [REDACTED]. These family members, who were present at the hearing, join in the Appellant's objections to discharge to a motel, yet they have not made any efforts to participate in the development of an alternative discharge plan. They expect the Appellant's care at the Facility to continue even though they acknowledge that she is unwilling to pay the large, unpaid sum and that she can afford to pay.



The discharge plan addresses the care needs the Facility's interdisciplinary care team, including its treating physician, have identified as necessary. It includes placement of necessary durable equipment, including a portable Hoyer lift, and arrangements for 24 hours of home health care services through AmericareNY. A recent assessment of the Appellant for post-transfer skilled nursing services performed by AmericareNY confirmed that with skilled nursing services "7 days a week x 24 hours a day," the Appellant is safe to transfer to the community. [Exhibit 7.] The Facility's proposed discharge plan meets its duty to provide an appropriate discharge plan so long as these services and equipment are in place prior to the transfer.

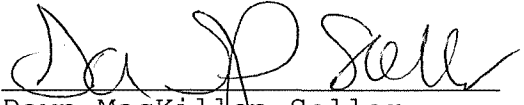
The Facility confirmed that the Appellant qualifies for up to four hours of Medicare coverage for community home health care services. The Appellant objects to paying out-of-pocket for the remaining 20 hours per day; however, she acknowledged that she has the means to pay for such help, which is why Medicaid denied her application. As discussed at the hearing, the Appellant's use of her available money to spend down her excess resources would also enable her to pursue Medicaid coverage. She offers no other suitable solution to meet her medical care needs. [Recording @ (2)16:25-18:43.]

Order

1. The Facility has established valid grounds for discharge of the Appellant and an appropriate discharge plan.

2. If the Respondent fails to pay the balance of \$ [REDACTED] owed to the Facility on or before [REDACTED], 2019, the Facility is authorized to discharge the Resident in accordance with this decision after ensuring that necessary durable medical equipment, including a portable Hoyer lift, and home health care services 24 hours per day/seven days per week are in place.

Dated: Albany, New York  
December 13, 2019

  
Dawn MacKillop-Soller  
Administrative Law Judge

To: [REDACTED]  
Silvercrest Center for Nursing and Rehabilitation  
144-45 87<sup>th</sup> Avenue  
Briarwood, New York 11435

Ms. Maureen Peters, Director of Social Work  
Silvercrest Center for Nursing and Rehabilitation  
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