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# Department of Health

ANDREW M. CUOMO  
Governor

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

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

January 13, 2020

**CERTIFIED MAIL/RETURN RECEIPT**

██████████  
c/o Holliswood Center for Rehabilitation  
and Nursing  
195-44 Woodhull Avenue  
Hollis, New York 11423

Yunetta Brown  
Holliswood Center for Rehabilitation  
and Nursing  
195-44 Woodhull Avenue  
Hollis, New York 11423

**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 :

[REDACTED]

Appellant, :

from a determination by :

**Holliswood Center for Rehabilitation and Nursing,** :

Respondent, :

to discharge him from a residential health care facility. :

**COPY**

**DECISION**

**Hearing Before:**

Ann H. Gayle  
Administrative Law Judge

**Held at:**

Holliswood Center for Rehabilitation and Nursing  
195-44 Woodhull Avenue  
Hollis, New York 11423

**Hearing Date:**

January 7, 2020<sup>1</sup>

**Parties:**

Holliswood Center for Rehabilitation and Nursing  
By: Yunetta Baron, Social Services Director

[REDACTED]

*Pro Se*

<sup>1</sup> The hearing, initially scheduled for December 19, 2019, was adjourned at Appellant's request with no objection by Respondent.

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 Holliswood Center for Rehabilitation and Nursing (“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(h). Respondent determined to discharge ██████████ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(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(h)(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. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact; it is less than a preponderance of the evidence but more than mere surmise, conjecture or speculation... Put differently, there must be a rational basis for the decision. Stoker v. Tarentino, 101 A.D.2d 651, 652, 475 N.Y.S.2d 562, 564 [App. Div. 3d Dept. 1984], mod. 64 N.Y.2d 994, 489 N.Y.S.2d 43.

A digital recording of the hearing was made part of the record. Appellant appeared and testified on his own behalf. Department of Veterans Affairs Social Worker Susan Reed assisted Appellant at the hearing and testified for Appellant. Social Services Director Yunetta Baron and Finance Coordinator Henna Mankowitz testified for Respondent. Administrator Douglas Liff was present for a portion of the hearing.

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: ████████ 2019 letter

Facility:

- 1: Finance notes
- 2: ████████ and ████████, 2019 bills
- 3: Medicaid budget letters for periods ████████/2019 and ████████/2019 ████████/2020
- 4: Medicaid application documents
- 5: Social Work notes

Appellant:

- A: ████████/2019 baseline care plan
- B: Ledger of Medicare and Medicaid payments to Facility
- C: Consultation reports from ████████ Hospital

**ISSUE**

Has Holliswood Center for Rehabilitation and Nursing established that the discharge is necessary and the discharge plan is appropriate?

**FINDINGS OF FACT**

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

1. Respondent, Holliswood Center for Rehabilitation and Nursing, is a residential health care facility located in Hollis, New York. (Ex I)

██████/Holliswood.

2. Appellant, ██████, age ██████ was admitted to the Facility on ██████ 2019, for short-term therapy following a hospitalization. The local Medicaid office established Appellant's NAMI (Net Available Monthly Income) to be \$█████ per month effective ██████ 2019 ("budget letter"). Henna Mankowitz provided Appellant with the budget letter on ██████ and ██████, 2019, and she informed Appellant of his responsibility to pay his monthly NAMI to the Facility. Ms. Mankowitz provided Appellant with a ██████ 19 invoice which listed NAMI payments of \$█████ for the months of ██████, and ██████ 2019, for a total of \$█████. Ms. Mankowitz provided Appellant with an ██████/19 invoice which listed a NAMI payment of \$█████ for ██████ through ██████ 2019. A ledger offered into evidence by Appellant shows a \$█████ balance due the Facility as of ██████ 2020. Appellant has not made any NAMI payments to the Facility. (Ex 2; Ex 3; Ex B; T Mankowitz, Baron)

3. By notice dated ██████, 2019 ("discharge notice"), Respondent advised Appellant that it had determined to discharge him on the grounds of failure, after reasonable and appropriate notice, to pay (or have paid under Medicare, Medicaid, or private insurance) for his stay at the Facility. The discharge location is ██████ for Rehabilitation and Nursing ("██████") located in ██████. (Ex I; Ex 5)

4. Appellant has remained at the Facility pending the outcome of this proceeding.

#### DISCUSSION

It is a resident's responsibility and obligation to pay for a stay at a facility. Respondent proved that during the course of Appellant's stay at the Facility, Facility representatives discussed with and explained to Appellant that he was responsible to pay the monthly NAMI to the Facility. Ms. Mankowitz testified that in each of the several conversations she had with Appellant about NAMI payments, Appellant repeatedly stated that he would not make any

payments to the Facility and that the Veterans Administration (“VA”) would make those payments. Both Respondent and Appellant’s VA social worker informed Appellant that he was responsible for his NAMI. Ms. Reed testified that the VA does not and will not make NAMI payments for Appellant. Ms. Mankowitz testified that she offered Appellant various payment options including having his Social Security benefits paid directly to the Facility and arranging a payment plan for the amount due. When Appellant denied that these options were ever offered to him, he was asked if he would be interested in these options going forward. Appellant testified that he was not interested, and that he has not and will not pay for his stay at the Facility because he alleges that the Facility is not providing him with any services.

Yunetta Baron testified that the Facility social workers, together with Appellant’s VA social worker, have been working with Appellant on discharge planning since last summer. When it was learned that Appellant’s home in the community was no longer available, housing applications and exploration of other housing including assisted living placement (“ALP”) commenced. Appellant was scheduled to be discharged to ██████████, but this was not viable following Respondent’s assessment that Appellant was a fall risk. ██████████ Assisted Living (“██████████ located in ██████████, and ██████████ Assisted Living (“██████████ located in ██████████ were identified as ALPs suitable for Appellant. ██████████ accepted Appellant and invited him to tour this ALP but Appellant was not interested. Nor was Appellant interested in being transferred to a location identified by Ms. Reed, the New York State Veterans' Home (“VA Home”) located in ██████████

Respondent then identified ██████████ as the discharge location for Appellant.

██████████r (Holliswood’s “sister” facility) located ██████████ is a skilled facility which provides services similar to Holliswood. Appellant testified that he does not wish



██████/ Holliswood

to go to ██████ because it is too far from his family and because he does not want to be “institutionalized” for the rest of his life. Appellant further testified that he might be interested in exploring the possibility of living with family members who live in the ██████ ██████. Ms. Brown and Ms. Reed agreed to continue to work with Appellant to explore these options as well as the VA Home, ██████ and ██████. They reiterated to Appellant that he would be financially responsible for a portion of the cost of his stay at any facility to which he would be discharged/transferred.

### CONCLUSION

Respondent has proven that Appellant has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third-party insurance) his stay at the facility. Appellant’s NAMI, his Social Security benefit, is available, and Appellant refuses to pay. Respondent has also proven that ██████ is an appropriate discharge location for Appellant.

### DECISION

I find that the Facility has proved by substantial evidence that the discharge is necessary.

The appeal by Appellant is therefore DENIED.

Respondent, Holliswood Center for Rehabilitation and Nursing, is authorized to discharge Appellant in accordance with the ██████ 2019 Discharge Notice. The discharge shall occur no sooner than ██████ 2020, in order to give Appellant an opportunity to make arrangements for housing in the community or to pursue transfer/discharge to the VA Home, ██████ ██████ or any other ALP or facility that might become available. Appellant may seek to leave the Facility sooner than ██████ 2020, if suitable housing or transfer to another facility is secured.



██████/Holliswood

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  
January 13, 2020



Ann H. Gayle  
Administrative Law Judge

TO: ██████████  
c/o Holliswood Center for Rehabilitation and Nursing  
195-44 Woodhull Avenue  
Hollis, New York 11423

Yunetta Baron  
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