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**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

October 6, 2020

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Massena Rehabilitation & Nursing Center
89 Grove Street
Massena, New York 13662

Haig Bogosian, Administrator
Massena Rehabilitation & Nursing Center
89 Grove Street
Massena, New York 13662

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

Massena Rehabilitation and Nursing Center

Respondent,

to discharge her from a residential health care facility.

COPY

DECISION

Before: Rayanne L. Babich
Administrative Law Judge (ALJ)

Date: August 18, 2020

Held at: Webex videoconference

Parties: ██████████, Appellant
c/o Massena Rehabilitation and Nursing Center
89 Grove Street
Massena, New York 13662

Haig Bogosian, Facility Administrator
Massena Rehabilitation and Nursing Center
89 Grove Street
Massena, New York 13662

JURISDICTION

By notice dated ██████████ 2020, Massena Rehabilitation and Nursing Center (Facility), a residential health care facility subject to Article 28 of New York Public Health Law (PHL), sought to discharge ██████████ (Appellant) from the Facility. The Appellant requested an appeal with the New York State Department of Health. 10 NYCRR 415.3(i). The hearing was held and

in accordance with the PHL; Part 415 of 10 NYCRR; Title 42, Part 483 of the United States Code of Federal Regulation (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR. The hearing was digitally recorded. The Appellant was provided the opportunity to appear at the hearing but did not appear. The Appellant's [REDACTED], attended the hearing on the Appellant's behalf.

RECORD

- ALJ Exhibits: I – Letter with Notice of Hearing
II – Notice of Discharge dated [REDACTED] 2020
- Facility Exhibits: 1 – Facility Invoice dated [REDACTED], 2020
2 – Department of Social Services NAMI budget
3 – Fax cover sheets for referrals to other facilities
4 – Patient Review Instrument (PRI) dated [REDACTED] 2020
5 – Nursing Progress Note dated [REDACTED] 2020
6 – Discharge Summary dated [REDACTED], 2020
7 – Nurse Practitioner Progress Note dated [REDACTED] 2020
- Appellant Exhibits: A – Community Bank, banking statement dated [REDACTED], 2020
B – Facility Invoice dated [REDACTED] 2020
C – Facility Letter dated [REDACTED] 2019
D – Physician Progress Note dated [REDACTED], 2020
- Facility Witnesses: Haig Bogosian, Facility Administrator
Abe Mostofsky, Director of Financial Operations
[REDACTED], Finance Coordinator
Danielle Kay, RN, Director of Nursing
- Appellant Witnesses: [REDACTED], Appellant's [REDACTED]

FINDINGS OF FACT

1. Massena Rehabilitation and Nursing Center is a residential health care facility as defined under PHL § 2801 (3).

2. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2020. The Appellant requires full assistance with all activities of daily living. [Exhibit 7; R1@41:53; R2@19:01.]
3. Appellant's [REDACTED], manages the Appellant's financial matters with the Facility. [R1@53:48.]
4. Upon admission, the Appellant was paying privately for her stay at the Facility at the rate of [REDACTED] per day. [Exhibit 1, C.]
5. The Appellant's Medicaid became effective on [REDACTED] 2020, with a Net Available Monthly Income (NAMI) of [REDACTED]. The Appellant became responsible for her NAMI contribution on [REDACTED] 2020 which was comprised of her Social Security and pension benefits. [Exhibit 2.]
6. On [REDACTED] 2020, the Facility issued a Notice of Discharge to the Appellant citing the "...failure, after reasonable and appropriate notice, to either pay for (or to have paid by Medicare, Medicaid or private insurance) your stay at our facility." The proposed discharge location is [REDACTED], which is a [REDACTED] hour drive from the Facility. [Exhibit II; R2@32:05.]
7. On [REDACTED], 2020, the Facility referred the Appellant to three (3) alternate facilities: [REDACTED], and [REDACTED]. On [REDACTED] 2020, the Facility made referrals to two (2) other facilities: [REDACTED] and [REDACTED]. [REDACTED] At the time of hearing, a response from [REDACTED] was still pending but none of the remaining four facilities accepted the Appellant for admission. [Exhibit 3; R1@42:33; 43:20.]

8. The Appellant has paid \$ [REDACTED] since the date of her admission for her care at the Facility. The outstanding unpaid balance owed to the Facility is [REDACTED] [Exhibit 1; R1@57:34; 44:20; 55:43.]

ISSUE

Has the Facility met its burden to show that its determination to discharge Appellant was proper due to nonpayment and whether the discharge plan is safe and appropriate?

APPLICABLE LAW

1. A residential health care facility, or 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).

2. A transfer or discharge is 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...

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

3. In planning for discharge, a facility must:

(vi) provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility, in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and provide a discharge summary pursuant to section 415.11(d) of this Title; and

(vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.

10 NYCRR 415.3(i)(1)(vi)-(vii).

4. The Facility has the burden to prove that the discharge plan and location is safe and appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

Grounds for Transfer

The Facility has met its burden to show that the transfer of the Appellant to [REDACTED] [REDACTED] is appropriate due to her failure to pay the outstanding balance owed to the Facility totaling [REDACTED]. A transfer or discharge is appropriate when, after notice, the resident has failed to pay for a stay at the facility, and there is no dispute as to the funds owed. 10 NYCRR 415.3(i)(1)(i)(b). The Facility submitted an invoice showing the balance due. [Exhibit 1; R2@46:39.] Prior to her admission, the Appellant was provided notice of the cost of care in a letter dated November 25, 2019. [Exhibit C.] Haig Bogosian, Facility Administrator, testified that the Appellant has been consistently behind in payments even though the Facility has made several attempts to collect payment. [R1@41:53.] The Appellant was provided notice of the amount owed through monthly invoices. [Exhibit 1; R1@1:32:05.] The Appellant has refused to pay the total amount of the balance. [Exhibit 1; R1@51:12.]

The Appellant does not dispute the amount due to the Facility. [R2@46:39.] At the time of her admission to the Facility, the Appellant agreed to pay for the cost of her care at the private rate of [REDACTED] per day. [Exhibit 1, C; R2@43:56.] These charges accrued through [REDACTED], 2020 and totaled [REDACTED]. [Exhibit 1.] On [REDACTED] 2020, the Appellant's Medicaid became effective with a monthly NAMI of [REDACTED] resulting in charges beginning on [REDACTED] 2020 through

██████████ 2020, at a total of ██████████. [Exhibit 2.] At the time of hearing, the Appellant had paid ██████████ toward her total cost of her care, but the remaining balance, comprised of the NAMI and private pay costs, is ██████████ [Exhibit 1; R1@44:20, 51:12, 57:34.] The Appellant's ██████████, testified that he was trying to pay the amount due as fast as possible, but he has also been paying past due balances to another facility and outstanding medical bills. [R2@37:29; 43:26.] Mr. ██████████ also testified that he will continue to make payments, and if the Appellant receives any income tax refunds, he will apply that toward the outstanding balance. [R2@47:30.] However, these future, potential payments to the Facility if those funds become available is not sufficient as it does not satisfy the Appellant's obligation to pay for her cost of care as provided. The Facility has a right to be paid for nursing and medical services it has provided the Appellant.

As the Appellant's ██████████ maintains access to her income, the regulation allows the Facility to seek to have paid the amounts due for Appellant's nursing home care from her income or resources. 10 NYCRR 415.3(h)(6). Staff from the financial offices of the Facility have made attempts to have paid each month the outstanding balance due on Appellant's account. ██████████ ██████████ Financial Coordinator for the Facility, testified that she reached out to the Appellant's ██████████, by telephone on at least two occasions to discuss the outstanding balance. [R1@57:50.] Abe Mostofsky, Director of Financial Operations for the Facility, testified that computer software automatically generates an invoice each month which is then mailed to the addresses on file. [R1@1:32:05.] The Facility applied to Social Security and has been assigned as the Representative Payee of the Appellant's Social Security income, which will cover only a portion of the Appellant's monthly NAMI payments. [R1@1:05:32.] However, the remaining portion of the monthly NAMI will be expected each month. [Exhibit 1.] The Appellant and her

██████████, may have good intentions to try to make payments, but this will not guarantee the payment of the already ██████████ still owed. I find the Facility has met its burden to show that grounds are proper to transfer Appellant due to non-payment.

Discharge Plan

The Facility has met its burden to show that its discharge plan to transfer the Appellant to ██████████ is safe and appropriate. [ALJ II.] Mr. Bogosian testified that in addition to ██████████, referrals were made to a total of five additional facilities throughout the local and surrounding areas. [R1@42:33.] Four of the facilities were unable to accept the Appellant for admission. [R1@43:02.] At the time of hearing, the Facility was in the process of following up with the remaining facility but had not yet received a definitive response [R2@42:33.] However, the evidence established that in the approximately two months since the Notice of Discharge was issued, the Appellant and Mr. ██████████ made no efforts to identify any other discharge locations.

The Appellant asserted that the proposed discharge location is inappropriate because the Facility has several unoccupied beds and ██████████ a is a ██████████ hour drive away, so she should be permitted to remain onsite. [R2@38:00.] However, the distance to the discharge location and the census of other beds at the Facility are not sufficient reasons to deny a discharge plan. The Facility has successfully identified ██████████ as a suitable location to meet the Appellant's needs. Danielle Kay, Director of Nursing for the Facility, testified she was part of the discharge planning team for the Appellant and stated that the ██████████ facility has similar care and will be able to meet the Appellant's needs. [R2@20:45.] The Facility's plan to discharge the Appellant to ██████████ is appropriate.

The Facility is authorized to transfer the Appellant in accordance with its discharge plan to

[REDACTED]

ORDER

1. The Facility is authorized to discharge the Appellant to the location identified in the notice of discharge and in accordance with its discharge plan.

Dated: October 5, 2020
Albany, New York



Rayanne L. Babich
Administrative Law Judge

TO: [REDACTED], Appellant
c/o Massena Rehabilitation and Nursing Center
89 Grove Street
Massena, New York 13662

Haig Bogosian, Facility Administrator
Massena Rehabilitation and Nursing Center
89 Grove Street
Massena, New York 13662