

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan  
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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

September 2, 2020

**CERTIFIED MAIL/RETURN RECEIPT**

Michael Monahan, Administrator  
Mary Manning Walsh Nursing Home  
1339 York Avenue  
New York, New York 10021

Susan Marotta, Esq.  
Archdiocese of NY/Office of Legal Affairs  
1011 First Ave  
Suite 1150  
New York, New York 10021



**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,

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: nm  
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

MARY MANNING WALSH NURSING HOME

Respondent,

to discharge him from a residential health  
care facility.

COPY

DECISION

Hearing Before:

Sean D. O'Brien  
Administrative Law Judge

Held via

WEB EX

Hearing Date:

August 31, 2020

Parties:

Mary Manning Walsh Home  
By: Susan M. Marotta, Esq.  
Archdiocese of New York  
Office of Legal Affairs  
Suite 1150  
New York, New York 10021

[REDACTED], Appellant's  
*Pro Se*

JURISDICTION

By notice dated [REDACTED] 2020, Mary Manning Walsh Home (the Facility), a residential 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's [REDACTED] and Designated Representative, Mr. [REDACTED] [REDACTED] (hereinafter Designated Representative), on behalf of his [REDACTED] 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: 1-3
- Facility Witnesses: Nerissa Lawrence, Medicaid Coordinator  
Michael Monahan, Administrator
- Appellant's Witness: [REDACTED]

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

ISSUE

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

FINDINGS OF FACT

Citations in parentheses refer to testimony (T.) of witnesses and exhibits (Exhibit) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant is a [REDACTED]-year-old man who was admitted to the Facility on [REDACTED] 2019, from [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] at the Facility. (T. Lawrence 18:34, 29:37, 35:27, T. Monahan 41:37).

2. The Appellant's diagnoses include [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] (T. Monahan 46:20).

3. During the period of his stay Appellant's Net Available Monthly Income (NAMI) amount was set at [REDACTED] [REDACTED] [REDACTED] [REDACTED] ([REDACTED]) a month starting in [REDACTED] 2019 through [REDACTED] 2020. (Exhibit 2; T. Lawrence 25:57, 32:33).

4. The [REDACTED] Department of Social Services (DSS) determined Appellant was required to pay \$ [REDACTED] as his NAMI toward the cost of his institutional care. The NAMI is based on Appellant's monthly Social Security while Medicaid covers the balance of his costs at the Facility. (Exhibit 2; T. Lawrence 19:57, 25:57, 32:24, 33:16, 33:21, 34:19)

5. There is no appeal pending DSS' determination of Appellant's NAMI amount. (T. Lawrence 34:00).

6. The Appellant has failed to pay his NAMI monthly amount to the Facility from [REDACTED] 2019 through [REDACTED] 2020 and [REDACTED] is now owed the Facility. (Exhibit 2; T. Lawrence 26:22, 36:21).

7. The Facility notified the Appellant's Designated Representative on several occasions by written notifications and through verbal communications by a number of staff members of the amount owed and of the Facility's willingness to work with the Designated Representative to develop a payment plan, but as of the date of Hearing the Designated Representative did not cooperate in developing a plan and no payments have been made on the balance the Appellant owes. (Exhibits 1, 2; T. Lawrence 16:50, 20:07, 21:21, 23:52, 24:16, 36:21).

8. The Appellant still requires skilled nursing care and the proposed discharge location is a skilled nursing facility which is part of the same healthcare system, [REDACTED] as the Facility. (T. Monahan 42:17, 42:28).

9. By notice dated [REDACTED] 2020, the Facility advised Appellant and the Designated Representative that it had determined to discharge the Appellant on the grounds of failure to pay for his stay at the Facility after being given reasonable notices to pay. The discharge location is the [REDACTED] [REDACTED] [REDACTED] Nursing Home, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Exhibit 3; T. Monahan 42:28).

10. 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. Substantial evidence means



such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 (3<sup>rd</sup> Dept. 1984), appeal dismissed 63 N.Y.2d 649.

#### DISCUSSION

The Appellant was admitted to the Facility for long term care on [REDACTED] 2019, with diagnoses including: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (T. Monahan 46:20).

The [REDACTED] [REDACTED] Department of Social Services determined the amount of Appellant's NAMI to be paid to the Facility is [REDACTED] per month. (Exhibits 1, 2). Due to the admitted non-payments by the Appellant and the Designated Representative over the past year and half the Facility alleges the amount Appellant now owes the Facility is [REDACTED]: (Exhibits 1, 2; T. Lawrence 36:21).

There is no appeal pending before the [REDACTED] Department of Social Services regarding the set NAMI amount. The NAMI amount is based on the Appellant's Social Security payment. The

Designated Representative states he understands the NAMI is to be paid to the Facility, but he cannot satisfactorily articulate sufficient reasons why the NAMI has not been paid to the Facility. (T. Massaquoi 51:12, 52:12).

The Facility has proven its determination to transfer/discharge the Appellant is correct due the Appellant's failure to pay his required NAMI amount after being given appropriate notices. The Appellant and the Designated Representative have simply decided not to pay the NAMI amount for the Appellant's stay and care at the Facility. The Facility has met its burden of establishing valid grounds for discharge. 10 NYCRR Section 415.3(h)(I)(b).

The Appellant still needs the medical care of a skilled nursing facility and the proposed discharge location is such a facility within the [REDACTED] healthcare system. [REDACTED] Nursing Home, in the [REDACTED] [REDACTED] provides a similar level of care as the Facility and will be a minimal disruption to family visitation access.

CONCLUSION

Mary Manning Walsh Home has established that its determination to discharge/transfer the Appellant is correct and the proposed discharge/transfer location is appropriate.

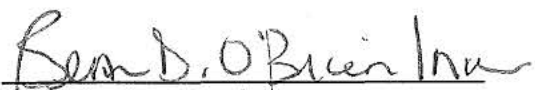
DECISION

The appeal by Appellant is therefore DENIED.

The Mary Manning Walsh Nursing Home, is authorized to discharge Appellant in accordance with the [REDACTED] 2020, 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  
September 2, 2020

  
Sean D. O'Brien  
Administrative Law Judge

To: Susan Marotta, Esq.  
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[REDACTED]