

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



**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

June 29, 2021

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o The New Jewish Home Manhattan
120 West 106th Street
New York, New York 10025

Margaret Bondy, DSW
The New Jewish Home Manhattan
120 West 106th Street
New York, New York 10025

Jason Atlas, Esq.
Schwartz Sladkus Reich Greenberg Atlas
444 Madison Avenue
New York, New York 10022

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 :

The New Jewish Home Manhattan, :

Respondent, :

to discharge him from a residential health care facility. :

COPY

DECISION

Hearing Before:

Ann Gayle
Administrative Law Judge

Held:

Via Cisco Webex

Hearing Date:

June 10, 2021¹
Record closed June 24, 2021

Parties:

The New Jewish Home Manhattan
By: Schwartz Sladkus Reich Greenberg Atlas, LLP

██████████ ██████████
Pro Se

¹ The hearing, initially scheduled for April 8, was adjourned to April 28, then June 10, 2021, at Appellant's request, due to medical reasons, with Respondent's consent. (Exhibits I, II, III, A, B, C)

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 The New Jewish Home Manhattan (“NJH,” “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(i). Respondent determined to discharge ██████ ██████ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(i)(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(i)(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 recording of the hearing was made part of the record. Appellant appeared and testified on her own behalf. Appellant's ██████████, assisted Appellant and testified. Michael Gottlieb, Esq., cross examined Appellant's witnesses and presented testimony from the following Respondent witnesses: Accounts Receivable Manager Sophie Wilkins, Assistant Medical Director Stephanie Le, M.D., and Social Worker Fay Goldfeder. Social Work Director Meg Bondy also participated.

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: ██████████, 2021 letter
- III: ██████████ 2021 letter

Facility:

- 1: NAMI budgets from NYCHRA
- 2: Invoice for NAMI charges
- 3: ██████████ 2021 medical assessment
- 4: Stephanie Le, M.D. letter

Appellant:

- A: Wheelchair evaluation request
- B: Appellant's request for adjournment of April 28 hearing date
- C: Referral for ██████████ consultation

ISSUE

Has The New Jewish Home Manhattan established that the discharge is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

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

1. Respondent, The New Jewish Home Manhattan, is a residential health care facility located in New York, New York. (Ex I)
2. Appellant, ██████ ██████ age ██████ was admitted to the Facility on ██████ 2018. The local Medicaid office established Appellant's NAMI (Net Available Monthly Income) to be \$ ██████ per month effective ██████, 2018; \$ ██████ per month effective ██████ 2019, and \$ ██████ per month effective ██████ 2020, to ██████ 2021. Respondent provided Appellant with bills and explained NAMI. (Ex 1; Ex 2; Ex 3; Ex 4; T Wilkins)
3. Respondent billed Appellant the exact amount established in the budget letter, \$ ██████ each month from ██████ 2018 through ██████ 2019. (Ex 1; Ex 2)
4. Respondent billed Appellant less than the established NAMI amount each month from ██████ 2019 through ██████ 2020, as follows: Respondent billed Appellant \$ ██████ each month from ██████ through ██████ 2019; \$ ██████ each month from ██████ 2019 through ██████ 2019; \$ ██████ each month from ██████ through ██████ 2020. The budget letter had established Appellant's NAMI as \$ ██████ per month for that period. (Ex 1; Ex 2)
5. Respondent billed Appellant the exact amount established in the budget letter, \$ ██████ each month from ██████ to ██████ 2020. (Ex 1; Ex 2)
6. Respondent billed Appellant \$ ██████ each month from ██████ through ██████ 2021. This was more than the \$ ██████ per month established in the budget letter for that period. (Ex 1; Ex 2)
7. By notice dated ██████ 2021 ("discharge notice"), Respondent advised Appellant that it had determined to discharge her on the grounds of failure to pay for her stay at the Facility. Appellant currently requires facility care. The discharge location is ██████, Respondent's

“██████ facility” located in ██████████. ██████████ provides care and services equivalent to Respondent. (Ex I; Ex 3; Ex 4; T Le; Goldfeder)

8. 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 she was responsible to pay the monthly NAMI to the Facility, and that Appellant has not made any payments to the Facility. Appellant and Appellant’s ████████ acknowledged that funds are due the Facility and that Appellant would pay the arrears due the Facility when she returns to her home in the community and gets her finances in order. Appellant’s testimony that Respondent’s bills to her were not the same as the amounts identified in the budget letters was corroborated by Respondent’s Exhibits 1 and 2. Respondent’s Exhibit 2 shows \$██████████ due the Facility as of ████████ 2021; Ms. Wilkins testified that \$██████████ was due as of ████████ 2021. Whether these amounts are accurate due to adjustments not reflected in the budget letters or off by hundreds of dollars, Respondent has established that a substantial amount is due the Facility as Appellant has not made a single payment during her entire stay at the Facility which began in ████████ 2018.

Appellant and Appellant’s ████████ do not want Appellant to be transferred to ██████████. They testified that: ██████████ is too far; Appellant’s motorized wheelchair cannot be serviced by the current service contractor whose catchment area is the five boroughs of New York City (“NYC”) (██████████ is in ██████████ County); and Appellant’s transportation provider, ██████████, would not be able to transport Appellant to her medical appointments because ██████████ services NYC, not ██████████ County.

Testimony at the hearing revealed that: Appellant's motorized wheelchair which has needed repairs/replacement might not be able to be serviced in ██████████ Appellant might not be able to be transported from ██████████ to her health care providers in NYC; and Appellant would consider and work with Respondent to explore transfer to a facility within NYC. The record remained open at the conclusion of the June 10 hearing to give the parties the opportunity to further explore those issues and options.

On a June 24, 2021 conference call the parties reported that: Medicaid would reimburse authorized transportation of Appellant to medical appointments, and they are exploring transportation in addition to/other than ██████████. The parties will explore whether Appellant would be transferred with her current motorized wheelchair or provided a different motorized wheelchair at ██████████. PRIs (Patient Review Instruments) were sent to several facilities; some did not accept Appellant, one did not respond, and one, ██████████ (██████████ accepted Appellant. Appellant's ████████ indicated that ████████ is too far from his home and that it would take him ████████ hours to visit Appellant at ████████ Appellant will provide Respondent with names of additional facilities, and Respondent will send PRIs to those facilities.

CONCLUSION

Respondent has proven that Appellant has failed, after reasonable and appropriate notice, to pay her portion of her stay at the facility. Appellant's NAMI is available, and Appellant has not made a single payment in her nearly three-year stay at the Facility. Respondent has also proven that ██████████ is an appropriate discharge location for Appellant.

DECISION

I find that the Facility has proved that the discharge is necessary and the discharge location is appropriate.

██████ NJH

The appeal by Appellant is therefore DENIED.

Respondent, The New Jewish Home Manhattan, is authorized to discharge Appellant in accordance with the ████████, 2021 Transfer/Discharge Notice. The discharge shall occur no sooner than ████████ 2021, in order to give Appellant and Appellant's ██████ an opportunity (independently or with Respondent's assistance) to accept ██████ or any facility that accepts Appellant and/or to continue to explore and possibly secure transfer/discharge to a location other than ████████. Appellant may leave the Facility sooner than ████████ 2021, if a location suitable and acceptable to her is secured prior to that date, or for any other reason Appellant chooses to leave.

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
June 29, 2021

Ann Gayle

Ann Gayle
Administrative Law Judge

TO: ████████ ████████
c/o The New Jewish Home Manhattan
120 West 106th Street
New York, New York 10025

Margaret Bondy, DSW
The New Jewish Home Manhattan
120 West 106th Street
New York, New York 10025

Jason Atlas, Esq.
Michael Gottlieb, Esq.
Schwartz Sladkus Reich Greenberg Atlas, LLP
444 Madison Avenue
New York, New York 10022