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Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Acting Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 8, 2021

CERTIFIED MAIL/RETURN RECEIPT



Alexandria Bet, SW
Medford Multicare Center for Living
3115 Horseblock Road
Medford, New York 11763

RE: In the Matter of [REDACTED] [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,

Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM: 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

Medford Multicare Center for Living
Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: Cisco WebEx Videoconference

Hearing Date: December 6, 2021

Parties: Medford Multicare Center for Living
3115 Horseblock Road
Medford, New York 11763
By: Alexandria Bet, Social Worker

By: ██████████
██████████
██████████

JURISDICTION

By notice dated [REDACTED], 2021, Medford Multicare Center for Living (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

- Facility witnesses: Alexandria Bet, Social Worker
- Facility exhibits:
 - 1 ([REDACTED] 2021 Discharge Notice)
 - 2 (Resident Face Sheet)
 - 3 ([REDACTED], 2021 Medical Progress Note)
- Appellant witnesses: No appearance by or on behalf of the Appellant
- ALJ exhibits:
 - I (Notice of Hearing and Accompanying Cover Letter)
 - II (Discharge Appeal Request Information)

A digital recording of the hearing was made.

ISSUES

Has the Facility established that its determination to discharge the Appellant was permissible and that the discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old woman who was admitted to the Facility on [REDACTED] 2021 for short-term rehabilitation after hospitalization for a [REDACTED] (Exhibit 2.)
2. The Appellant is a recipient of both Medicare and Medicaid. The Appellant’s eligibility for Medicaid includes a requirement that she remit a certain amount of her income (net available income or “NAMI”) to the Facility for each month of stay. (Exhibits 1 and 2.)

3. The Facility repeatedly notified the Appellant's ██████████ that the Appellant was required to pay her NAMI to the Facility. (Recording @ 6:11.)

4. As of ██████████ 2021, the Appellant owed the Facility \$ ██████████ for unpaid NAMI. (Exhibit 1.)

5. By notice dated ██████████ 2021, the Facility determined to discharge the Appellant on ██████████, 2021 because she failed, after reasonable and appropriate notice, to pay her NAMI. The notice advised the Appellant that she would be discharged to her home, where her ██████████, and ██████████ reside. (Exhibit 1; Recording @ 2:14.)

6. On ██████████ 2021, the Appellant's ██████████ requested this hearing on her ██████████ behalf. (Exhibit II.)

7. On ██████████ 2021, at the request of the Appellant's ██████████ the Facility discharged the Appellant to her home by ambulance. (Recording @ 7:00.)

APPLICABLE LAW

A residential health care facility (also referred to in the regulations as a 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).

Regulations at 10 NYCRR § 415.3(i) describe the transfer and discharge rights of residential health care facility residents. They state, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility:

(b) 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... 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;

The residential health care facility must prove by substantial evidence that the discharge was necessary, and the discharge plan was appropriate. 10 NYCRR § 415.3(i)(2)(iii); State Administrative Procedure Act § 306(1).

DISCUSSION

By notice dated [REDACTED] 2021, the Facility advised the Appellant of its determination to discharge her on [REDACTED] because she has failed, after reasonable and appropriate notice, to pay for her stay at Medford MultiCare Center. (Exhibit 1.) On [REDACTED] the Appellant's [REDACTED] requested this hearing to contest the Facility's determination. Although duly notified of the date, time, and place of this hearing, neither the Appellant nor her [REDACTED] attended the hearing. The information provided by the Facility at the hearing is therefore undisputed.

The Appellant was admitted to the Facility on [REDACTED] 2021 for short-term rehabilitation after a [REDACTED]. As a Medicaid recipient, the Appellant was obligated to pay her NAMI, an amount computed by the local social services district pursuant to Medicaid budgeting rules, to the Facility. (Exhibit 2.) This requirement was communicated to the Appellant and her [REDACTED] repeatedly. (Recording @ 6:11.) By [REDACTED] the Appellant owed the Facility \$ [REDACTED] for unpaid NAMI. (Exhibit 1.) The Facility has established that the Appellant has failed, after reasonable and appropriate notice, to pay for the cost of her stay.

Regarding its discharge plan, the [REDACTED] 2021 discharge notice advised the Appellant that she would be discharged to her home, where her [REDACTED], and

██████ Medford Multicare Center for Living

██████ reside. (Exhibit 1; Recording @ 2:14.) On November 10, Facility medical staff evaluated the Appellant and determined that she was medically stable and ready for discharge. (Exhibit 3.) The Appellant was discharged to her home on ██████ via ambulance, as requested by her ██████

Although the Appellant reached her maximum rehabilitation potential at the Facility and remained in stable condition as of the date of her discharge, the Appellant is bedbound and requires round-the-clock assistance. (Recording @ 3:48.) Social Worker Alexandria Bet arranged for the Appellant to have a Hoyer lift delivered to her home to assist caregivers with lifting and transferring her. Ms. Bet also arranged for a home health services agency to schedule a nursing assessment, the first step in the Appellant's receipt of home health services or, at minimum, personal care services. (Recording @ 4:24.)

The discharge plan addressed the Appellant's medical needs and how those needs would be met after discharge. Through regular communication with the Appellant's ██████ the Facility also afforded the Appellant and her family sufficient preparation and orientation to ensure a safe and orderly discharge. 10 NYCRR § 415.3(i)(1)(vi). The Facility has established that the discharge plan it devised for the Appellant is appropriate.

The Facility's ██████ 2021 discharge determination is upheld.

DECISION

Medford Multicare Center for Living has established that its determination to discharge the Appellant was permissible pursuant to 10 NYCRR § 415.3(i)(1)(i)(b) and that the discharge plan is appropriate.

Dated: December 8, 2021
Menands, New York



Natalie J. Bordeaux, Administrative Law Judge