

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



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

February 8, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Vickey Johnson
Archcare at Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

Vickey Johnson
Archcare at Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

██████████
(By Email Only)

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,

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

Archcare at Terence Cardinal Cooke,
Respondent,

to discharge him from a residential health care facility.

Before: Kimberly A. O'Brien
Administrative Law Judge

Held at: Videoconference via WebEx

Date: January 31, 2022 ¹

Parties: Appellant ██████████ ██████████ Pro Se

Archcare at Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029
By: Vickey Johnson, Director of Finance

COPY

Decision

¹ Record closed February 7, 2022.

On [REDACTED] 2022,² Archcare at Terence Cardinal Cooke (Respondent or facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), issued a discharge notice stating that it determined to discharge [REDACTED] [REDACTED] (Appellant or resident) from the facility. Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) 415.3(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Vickey Johnson, Director of Finance testified on behalf of the Respondent. [REDACTED]

[REDACTED] Appellant, and [REDACTED] Appellant's [REDACTED]/Representative appeared and provided testimony (T). The exhibits (Ex.) include: ALJ Ex. 1- [REDACTED] 2021 & [REDACTED] 2022 Discharge Notices; ALJ Ex. 2 - Ms. Johnson's [REDACTED] 2022 Email; and Respondent (Resp.) Ex. A- Medicaid Acceptance & Budget Letter "NAMI", Resp. Ex. B - Invoice, Resp. Ex. C -Notes re Communications with Appellant and Ms. [REDACTED] Resp. Ex. D- Notice of Medicare Non-Coverage.

FINDINGS OF FACT

1. The Appellant has been a resident at the facility since [REDACTED], 2021 [ALJ Ex. 1, ALJ Ex. 2; Resp. Ex. B, D].

² A prior discharge notice was issued on [REDACTED] 2021 and a hearing was scheduled for December 28, 2021. The Bureau of Adjudication (Adjudication) telephoned Stevenson Andre, Director of Social Work, named facility contact, after the facility and the resident did not appear at the hearing. Clearly, the facility forgot about the hearing and the ALJ required that the facility issue a new Notice of Hearing. [ALJ 1].

2. The Appellant began receiving Medicaid coverage in [REDACTED] 2021 and is responsible for paying his net available monthly income (NAMI) to the Respondent which includes his Social Security and New York City Employee Retirement System (NYCERS) pension benefits (NYCERS or pension). The facility has had ongoing communications with the Appellant and Ms. [REDACTED] about the outstanding NAMI balance [T. Johnson, [REDACTED] Resp. Ex. A, B, C, D; ALJ Ex. 2]

3. The Appellant transferred his monthly Social Security payment to the Respondent in [REDACTED] 2021 and has never paid his monthly pension benefits to Respondent. Appellant owes in excess of \$ [REDACTED] [T. Johnson; Resp. Ex. B; ALJ Ex. 2].

4. The [REDACTED] 2022 Transfer/Discharge Notice (discharge notice) states that Appellant will be transferred because the Appellant “after reasonable and appropriate notice” has failed to pay for his stay. (T. Johnson; Resp. Ex. B; ALJ Ex.1)

5. The facility has proposed to discharge the resident to [REDACTED] Nursing Home, [REDACTED] [T. Johnson; ALJ Ex. 1]

6. The Appellant has remained at the facility during the pendency of the appeal.

ISSUES

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

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. (PHL § 2801[2][3]; 10 NYCRR 415.2[k].)

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations. (10 NYCRR 415.3[i][1].)

The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(b), which states:

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.

Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii), the facility bears the burden to prove a discharge is necessary and appropriate. Under SAPA § 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. It is less than a preponderance of evidence but more than mere surmise, conjecture or speculation, and it constitutes a rational basis for a decision. (Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3d Dept. 1984], appeal dismissed 63 N.Y.2d 649.

DISCUSSION

The facility has shown that after providing reasonable and appropriate notice the Appellant has failed to pay for his stay and that the discharge is necessary, and the proposed discharge plan is appropriate.

Ms. Johnson testified that from [REDACTED] of 2021 forward the resident was required to pay his NAMI to the facility. The NAMI payment was explained, and facility staff have had many discussions with the resident and Ms. [REDACTED] about the required NAMI payments and the outstanding balance. Ms. Johnson testified that from [REDACTED] 2021 until [REDACTED] 2021 the facility did not receive the resident's Social Security checks and has not yet received any pension payments.

The resident testified that he has not received any checks since he has been at the facility. He said that Ms. [REDACTED] told him she changed his address when he was admitted to the facility. The resident agreed to work with Ms. Johnson and Ms. [REDACTED] to follow up with Social Security and NYCERS to find out where the "checks" went.

Ms. [REDACTED] "appeared" at the hearing by phone and indicated that she was in her car driving to various unspecified "appointments." The ALJ asked her to pull over if she was going to make a statement.³ Ms. [REDACTED] said she had the resident's mail forwarded to a post office box when he entered the facility. She confirmed that she has access to a post office box and has been picking up the resident's mail and was "going there today." Ms. [REDACTED] said the last time she went to the post office box was about a month ago. Ms. [REDACTED] denied seeing any checks

³ Well in advance of the hearing Adjudication telephoned Ms. [REDACTED] and notified her about the date and time of the hearing. She did not wish to provide her home address; at her request the Notice of Hearing was emailed to her at the address she provided. The WebEx hearing invitation was emailed to the same address.

and denied knowing where the checks went. Ms. [REDACTED] agreed to go over to the facility immediately after the hearing to meet with the resident and Ms. Johnson to facilitate tracing where the Social Security and pension payments were/are going.

At the ALJ's request Ms. Johnson emailed Adjudication a status report and cc'd the resident and Ms. [REDACTED] [ALJ Ex. 2 *Johnson Email 2-7-2022*]. It was determined that the resident's [REDACTED] 2021 Social Security payment was in the form of a "paper check that was sent to the resident," and the [REDACTED] thru [REDACTED] checks were directly deposited into an "M&T bank account" (M&T account). Ms. Johnson shared this information with the resident and Ms. [REDACTED] and they denied knowing anything about an M&T account, even though facility records show the resident had an M&T account prior to his admission. Apparently, the resident and Ms. [REDACTED] then recalled that the resident had an M&T account and said they would need to confirm whether the missing Social Security and pension funds were deposited there.

CONCLUSION

For more than six months the facility has been asking that the owed NAMI monies be paid. The facility issued a discharge notice [REDACTED] 2021 and a second one on [REDACTED] 2022 stating that it planned to discharge the resident for non-payment. It defies credulity that the resident and Ms. [REDACTED] "forgot" about the M&T account and that they now have no idea whether the NAMI monies (\$ [REDACTED]) were/are going into the M & T account.

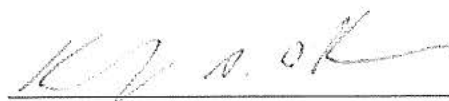
The resident has failed, after reasonable and appropriate notice, to pay his NAMI to the facility and the discharge/transfer is necessary. The resident's proposed discharge/transfer to [REDACTED] Nursing Home is appropriate as it is available and provides the same level of care.

DECISION

Respondent has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. The facility is authorized to discharge the Appellant in accordance with its discharge plan on or after [REDACTED] 2022.
2. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules.

DATED: Albany, New York
February 8, 2022



Kimberly A. O'Brien
Administrative Law Judge

To: Vickey Johnson
Archcare at Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

[REDACTED] [REDACTED] C/o Vickey Johnson
Archcare at Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

[REDACTED] [REDACTED]
(By Email Only)