



Department of Health

ANDREW M. CUOMO
Governor

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

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

January 5, 2017

CERTIFIED MAIL/RETURN RECEIPT

Carolee Lee, Director of Social Work
Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591

[REDACTED], Resident
c/o Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591


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:cah
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

-----X
 In the Matter of an Appeal, pursuant to :
 10 NYCRR § 415.3, by :
 :
 [REDACTED], :
 :
 Appellant, :
 :
 from a determination by :
 :
 TARRYTOWN HALL CARE CENTER, :
 :
 Respondent, :
 :
 to discharge her from a residential health :
 facility :
 -----X

DECISION

COPY

Tarrytown Hall Care Center ("Facility") issued a Notice of Discharge to [REDACTED] ("Resident"). The Resident requested an appeal of the proposed discharge.

Administrative Law Judge ("ALJ") William J. Lynch, Esq., held a hearing on December 29, 2016, at the Facility which is located at 20 Wood Court, Tarrytown, New York. The hearing was held in accordance with the Public Health Law of the State of New York ("PHL"); Parts 51 and 415 of Volume 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"); Part 483 of the United States Code of Federal Regulations ("CFR"); and the New York State Administrative Procedure Act ("SAPA"). Evidence was received and witnesses were examined. An audio recording of the proceeding was made.

The following individuals were present for the hearing:
[REDACTED], Resident; Carolee Lee, Director of Social Work; Amanda MacConnell, Assistant Administrator; Christine Walker, Director of Nursing; Alex Rodriguez, Finance Coordinator.

STATEMENT OF THE CASE

Respondent made a determination to discharge the Resident from the Facility. The stated reason for the discharge is that the Resident has failed to pay for her stay at the Facility. The Resident filed a timely request for an appeal of the discharge decision and has remained in the Facility pending a final determination.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether the Facility has a permissible reason for discharging the Resident and has provided for an appropriate discharge plan. The Facility has the burden of proving its case by substantial evidence (SAPA § 306[1], 10 NYCRR § 415.3[h][2][iii]).

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Citations in parentheses refer

to exhibits or the audio recording of the hearing. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. The Resident was admitted to the Facility on [REDACTED] [REDACTED] 2016. She is currently [REDACTED] years of age. (Facility Ex. 6; Recording @ 13:30).

2. The Resident has been diagnosed with [REDACTED] and [REDACTED]. (Facility Ex. 6; Recording @ 45:30).

3. The Resident's stay at the Facility was covered by Medicare until [REDACTED], 2016, and the Resident became private pay beginning [REDACTED], 2016. (Facility Ex. 4).

4. Since that time, the Resident has made sporadic payments to the Facility, but she owes a total arrears of [REDACTED] for the period through [REDACTED] 2016. The Facility staff notified the Resident regarding the amount owed and the requirement to pay. (Facility Ex. 2, 3, 4; Recording @ 10:45, 33:15).

5. The Resident did not dispute the amount the Facility has charged for her stay at the Facility. (Facility Ex. 3; Recording @ 53:15).

6. On [REDACTED] 2016, the Facility issued a discharge notice to the Resident. The proposed discharge location is [REDACTED]

[REDACTED] (Facility Ex. 1).

ANALYSIS AND CONCLUSIONS

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR 415.3[h][1]). In this instance, the Facility alleges that the Resident's discharge is permissible pursuant to 10 NYCRR 415(h)(1)(i)(b), which permits the transfer of a resident when:

[T]he 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.

The Resident did not dispute that she had failed to pay the amount owed. Nonetheless, the Resident claimed that she was not ready to return to her apartment and wanted to remain at the Facility to receive additional rehabilitation services.

The Facility provided testimony and documentary evidence which established that it gave the Resident reasonable and appropriate notice of the amount that she was required to pay and that the Resident failed to pay. The Facility also established that the proposed discharge plan is safe and appropriate. The Facility initially attempted to arrange discharge to the

Resident's [REDACTED] but the Resident did not provide the information required by the home care service agency. Therefore, the Facility identified a skilled nursing facility which was willing to admit the Resident. The Resident will be able to receive the continued wound care that she requires if she is transferred to another skilled nursing facility such as [REDACTED] [REDACTED] which is the proposed discharge location.


At the hearing, the Resident expressed a willingness at this time to cooperate with the Facility in arranging home care services so she can return to her condominium. If the Resident provides the information required by the home care agency and services can be arranged, she can exercise the option of voluntarily returning to her condominium. However, the Facility is authorized to discharge the Resident in accordance with its discharge plan to [REDACTED] [REDACTED] if the Resident does not arrange home care services.

DECISION

1. Respondent is authorized to discharge the Resident in accordance with its discharge plan;
2. This decision shall be effective upon service on the Resident by personal service or by certified or registered mail.

3. 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
January 4, 2017



WILLIAM J. LYNCH
Administrative Law Judge