



Department of Health

ANDREW M. CUOMO
Governor

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

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

April 25, 2019

CERTIFIED MAIL/RETURN RECEIPT

Amy Ebbinger, Esq.
Archcare
205 Lexington Avenue, 2nd Floor
New York, New York 10016

██████████
c/o Terrence Cardinal Cooke
1249 Fifth Avenue
New York, New York 11201

Wanda Coles, Ombudsman
156 20 Riverside Drive West
New York, New York 10032

Rayna Terry-Taylor, DSW
Terrence Cardinal Cooke
1249 Fifth Avenue
New York, New York 11201

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:
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

COPY

In the Matter of
Resident [REDACTED] / Terrence Cardinal Cooke
Healthcare Center

Administrative Law Judge's Decision

Appeal from a Nursing Home Resident Discharge
pursuant to Title 10 NYCRR 415.3(h)

Before: Administrative Law Judge (ALJ) James F. Horan

For Terrence Cardinal Cooke
Healthcare Center (Facility): Amy Ebbinger, Esq.

For Resident [REDACTED] (Appellant): *Pro Se*

The Appellant requested a hearing in this matter pursuant to Title 10 NYCRR §415.3(h) to appeal the Facility's decision to discharge the Appellant. The Facility seeks to discharge the Appellant to another skilled nursing facility, on the grounds that the Appellant failed after sufficient and appropriate notice to pay his share for his stay in the Facility. After a proceeding in this matter, at which the parties appeared and submitted documentary evidence, the ALJ finds that the Facility has established that the Appellant failed to pay his share for his care at the Facility. The ALJ finds the Appellant's discharge appropriate and the ALJ finds that the Facility has provided an appropriate discharge plan involving transfer to another nursing home.

I. Background

Under Title 10 NYCRR § 415.3(h), a nursing home resident holds certain rights in regard to transfer or discharge. Title 10 NYCRR § 415.3(h) allows discharge if a resident has failed to pay, after reasonable and appropriate notice, for his stay at the Facility. The resident may challenge the discharge in a hearing pursuant to § 415.3(h)(2). Under the hearing procedures at

§415.3(h)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under New York State Administrative Procedure Act § 306(1) (McKinney 2019), 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 (3rd Dept. 1984), appeal dismissed 63 N.Y.2d 649. Substantial evidence demands only that a given inference is reasonable and plausible, not necessarily the most probable, Ridge Road Fire Dept. v, Schiano, 16 N.Y.3d 494 (2011).

The Facility provided a Discharge Notice [Hearing Exhibit 1] to the Appellant on [REDACTED] 2019, citing as the grounds for the discharge the failure to pay. The Discharge Notice proposed transfer to another skilled nursing facility, [REDACTED] Nursing Home, in [REDACTED]. The Appellant then requested the hearing that took place at the Facility on February 28, 2019. The Appellant spoke on his own behalf and received assistance from Ombudsman Wanda Coles. The Facility's Director of Patient Accounts, Vicki Johnson, testified for the Facility. The ALJ received the following documents into the record:

- | | |
|---------------------|--|
| ALJ Exhibit I | Notice of Hearing, |
| ALJ Exhibit II | Letter to the Parties with Attachment March 13, 2019. |
| Facility Exhibit 1 | Invoice, |
| Facility Exhibit 2 | Accepting Medicaid Assistance. |
| Appellant Exhibit A | Acknowledgement from U. S. Social Security Administration. |

The ALJ left the record open following the hearing for the Respondent to offer information from the United States Social Security Administration concerning the Appellant's efforts to regain his Social Security benefits. The record also included a digital audio recording from the hearing on

two compact disc (CD). References to statements from the recordings will reference the time on the CD at which the statement occurs (*e.g.* “CDI at 12:40” means that the statement occurred on the first CD at 12 minutes and 40 seconds into that recording).

II. Findings of Fact

The matters in brackets following the findings reflect statements from hearing recording or exhibits in evidence [Ex] on which the ALJ relied in making the findings. If contradictory information appears elsewhere in the record, the ALJ considered that information and rejected it.

1. The Appellant entered the Facility from [REDACTED] originally in [REDACTED] 2018 and continually since [REDACTED] 2018 following several additional hospital stays [CD 12:30; 14:40].
2. The Facility concedes that the Appellant continues to require skilled nursing care due to [REDACTED] and wound care [CD 4:45].
3. The Medical Assistance Program (Medicaid) has paid the vast majority of the cost for the Appellant’s care at the Facility since [REDACTED] 2018 [CD 8:03].
4. As part of the agreement with Medicaid to pay toward the cost for the Appellant’s care at the Facility, the Appellant must contribute to his care in the amount of \$ [REDACTED] per month in benefits that the Appellant receives from Social Security [CD 10:03].
5. The Appellant’s Social Security benefits have been suspended and the Respondent has failed to pay the \$ [REDACTED] monthly payment for his care [CD 3:38].

6. The Appellant has accumulated a debt to the Facility that totaled \$ [REDACTED] as of the day of the hearing [CD 8:03].

III. Conclusions

The evidence at hearing showed that the Appellant has failed to pay the full cost for his stay at the Facility. This constitutes grounds for the Appellant's discharge. The Facility concedes that the Appellant continues to require skilled nursing care and has arranged for the Appellant's transfer to a skilled nursing facility in [REDACTED]. The ALJ finds the transfer to another nursing home constitutes an appropriate discharge plan.

The Appellant claimed at hearing that he wanted to leave the Facility and return to his former residence, but that the Facility was holding him hostage over the money the Appellant owes the Facility. The ALJ finds that claim non-credible because this hearing concerns the Facility trying to discharge the Appellant and the Appellant challenging the discharge. The Facility advises against the Respondent going without skilled nursing care due to the Appellant's medical needs, but the Appellant may leave the Facility against medical advice if he wishes.

The Appellant explained that he was working currently with his [REDACTED] to end the suspension in Social Security benefits. The Appellant claimed that the suspension would end if his [REDACTED] would agree to become the Appellant's payee for the benefits. The Respondent has refused offers by the Facility for the Facility to become payee. The Appellant's [REDACTED] was scheduled to meet with Social Security the day after the hearing. The ALJ left the hearing record open so the Appellant could submit documentation from Social Security concerning any developments relating to the benefits suspension. On [REDACTED] 2019, the Facility forwarded by

fax transmission a letter from Social Security to the Appellant. That letter became Hearing Exhibit A. In a letter to the parties on March 13, 2019, the ALJ wrote that Exhibit A showed only that the Appellant's [REDACTED] had applied to be the payee for his [REDACTED] benefits [Hearing Exhibit ALJ II]. The ALJ letter then requested any other documentation the Appellant might receive from Social Security concerning the benefits. Five weeks have now passed since the ALJ wrote to the parties and the Appellant has provided no further documentation. The ALJ sees no point in waiting any longer to issue a decision in this case.

The Appellant has failed to pay his share for his care at the Facility and has provided no indication when and if he will pay his share in the future. The transfer to [REDACTED] Nursing Home may proceed.

ORDER

NOW; after considering the request for Hearing, the testimony and the documents in evidence, the ALJ issues the following Order:

1. The ALJ rules that the Facility has demonstrated grounds for the Appellant's discharge.
2. The Facility may discharge the Appellant pursuant to the discharge plan and to this Order.

Dated: Menands, New York
April 24, 2019



James F. Horan
Administrative Law Judge

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