



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

September 19, 2019

CERTIFIED MAIL/RETURN RECEIPT

Stu E. Spodek, Of Counsel
Schwartz Sladkus Reich Greenberg Atlas, LLP
444 Madison Avenue
New York, New York 10022

[REDACTED]
c/o The Hamptons Center for Rehabilitation
and Nursing
64 County Road 39
Southampton, New York 11968

Margaret Byrnes, SW
The Hamptons Center for Rehabilitation
and Nursing
64 County Road 39
Southampton, New York 11968

[REDACTED]

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: cmg
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of an Appeal, pursuant to
10 NYCRR § 415.3, by

[REDACTED]

Appellant,

from a determination by

**The Hamptons Center for
Rehabilitation and Nursing,**

Respondent,

to discharge him from a residential
health care facility.

ORIGINAL

DECISION

Hearing Before:

Natalie J. Bordeaux
Administrative Law Judge

Hearing Location:

The Hamptons Center for Rehabilitation and Nursing
64 County Road 39
Southampton, New York 11968

Hearing Date:

September 4, 2019
The record closed on September 18, 2019.

Parties:

The Hamptons Center for Rehabilitation and Nursing
64 County Road 39
Southampton, New York 11968
By: Stu E. Spodek, Of Counsel
Schwartz Sladkus Reich, Greenberg Atlas LLP
444 Madison Avenue
New York, New York 10022

[REDACTED]
Pro Se

JURISDICTION

By notice dated ██████████, 2019, The Hamptons Center for Rehabilitation and Nursing (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge ██████████ (the Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(h).

HEARING RECORD

Facility witnesses:

Margaret Byrnes, Social Worker
Debra Casey, Medicaid Specialist
Takisha Nation, Financial Coordinator
Vince A. Liaguno, Administrator

Facility exhibits:

1 (██████████, 2019 Discharge Notice)
2 (Social Services Progress Notes)
3 (██████████ 2019 Invoice)

Appellant witnesses:

██████████, Appellant
██████████, Appellant's ██████████

Appellant exhibits:

None

ALJ exhibits:

I (Notice of Hearing and Accompanying Cover Letter)
II (Nursing home referrals sent on the Appellant's behalf)

A digital recording of the hearing was made.

ISSUES

Has the Facility established that its determination to discharge the Appellant was permissible pursuant to 10 NYCRR § 415.3(h)(1)(i)(b) and that the discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a ██████-year-old man who was admitted to the Facility on ██████████ 2018 for short-term rehabilitation after hospitalization. (Exhibit 1; Recording @ 5:23, 38:20.)

2. In accordance with Medicare coverage guidelines propounded by the Centers for Medicare and Medicaid Services (CMS), the Appellant's Medicare insurer paid the Facility for the cost of the first 20 days of the Appellant's stay (██████████ 2018 through ██████████ 2018). From ██████████, 2018 through ██████████ 2018, the Appellant incurred a daily Medicare copayment payable to the Facility totaling \$██████████ (Exhibit 3.)

3. The Appellant's Medicare insurer has not made additional payments to the Facility for the cost of the Appellant's care since ██████████ 2018. (Exhibit 3.)

4. Since ██████████ 2018, the Appellant has incurred a daily charge of \$██████████ for the cost of his continued stay at the Facility, for which the Facility has received no payment. (Exhibit 3; Recording@ 16:48, 27:17.)

5. The Appellant has no other insurance coverage available to pay for the cost of his continued stay and has repeatedly declined to apply for Medicaid. He has also refused to make out-of-pocket payments to the Facility for his care. (Exhibit 2, Recording @ 19:40.)

6. Facility staff mailed monthly invoices to the Appellant's home address, where his ██████████ continues to reside. Medicaid Specialist Debra Casey has also hand-delivered invoices to the Appellant each month since ██████████ 2019 and advised the Appellant that he must remit payment in order to remain at the Facility. (Recording @ 31:00.)

7. On July 11, 2019, Facility staff, including Administrator Vince Liaguno, Social Worker Margaret Byrnes, Debra Casey, and Financial Coordinator Takisha Nation held a care plan meeting with the Appellant, his ██████████ and his ██████████ to discuss the Appellant's outstanding nursing home bill. Although the Appellant signed paperwork for a Medicaid application at the meeting, the Appellant's ██████████ subsequently contacted Ms. Casey to inform her that the

Appellant was no longer willing to apply for Medicaid and would not allow the Facility to receive his Social Security Retirement income directly. (Exhibit 2; Recording @ 22:30.)

8. By notice dated ██████████, 2019, the Facility determined to discharge the Appellant on ██████████, 2019 because he has failed, after reasonable and appropriate notice, to pay for his stay. The notice proposes to discharge the Appellant to ██████████ Nursing and Rehabilitation Center located in ██████████ New York. (Exhibit 1.)

9. As of ██████████ 2019, the Appellant owes the Facility more than \$ ██████████ reflecting the unpaid Medicare copayment incurred for the remaining days in ██████████ 2018, the daily cost of his nursing home stay since ██████████ 2018, and the cost of additional therapeutic services he has received during his stay. (Exhibit 1.)

10. The Appellant remains at The Hamptons Center for Rehabilitation and Nursing pending the outcome of this appeal.

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(h) 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(h)(2)(iii); State Administrative Procedure Act § 306(1).

DISCUSSION

The Appellant was admitted to the Facility on ██████████ 2018 for short-term rehabilitation. The first 20 days of the Appellant's stay was paid in full by his Medicare insurer. From ██████████ 2018 through ██████████ 2018, the Appellant was required to pay the Facility a copayment towards the cost of his inpatient stay as part of his Medicare insurer's continued coverage of his nursing home stay. Effective ██████████ 2018, the Appellant became a strictly "private pay" patient at the facility, signifying that he was personally responsible for payment of the daily cost of his continued stay. (Exhibit 3.)

By notice dated ██████████, 2019, the Facility advised the Appellant of its determination to discharge him on ██████████, 2019 because he has failed, after reasonable and appropriate notice, to pay for his stay at The Hamptons Center for Rehabilitation and Nursing. (Exhibit 1.) The Appellant's outstanding balance at the Facility currently exceeds \$██████████ (Exhibit 2.) Despite multiple conversations with Facility staff concerning his personal responsibility for the cost of his stay and invoices delivered to the Appellant and mailed to his ██████████ each month, the Appellant has made no payments to the Facility. Although the Appellant was previously in receipt of nursing home Medicaid coverage subject to a net available monthly income (NAMI) of over

\$██████████ the Appellant has refused to pay this amount in order to activate his Medicaid coverage and has no other medical insurance in place to apply toward his nursing home bill. (Recording @ 35:00, 45:47.)

Neither the Appellant nor his ██████████ contested the Facility's assertion that the Appellant owes the Facility over \$██████████ (Recording @ 43:30.) However, the Appellant's ██████████ asserted that the Facility should be assigned some blame or responsibility for allowing the Appellant's bill to reach such a large amount before taking steps to discharge him. (Recording @ 41:08.) Her claim is without merit. The Facility is not complicit in the Appellant's failure to meet his obligations. Facility staff repeatedly apprised the Appellant and his family of the accruing bill, but the Appellant has not been willing to make payments towards his care. The Facility also made multiple attempts to secure Medicaid coverage for the Appellant. Neither the Appellant nor his family were willing to cooperate with activating the Appellant's Medicaid coverage because they sought to preserve the Appellant's income and assets for other use. (Exhibit 2.) The Facility has established that the Appellant has failed, after reasonable and appropriate notice, to pay for the cost of his stay.

Regarding its discharge plan, the Facility proposes to discharge the Appellant to Pathways Nursing and Rehabilitation Center, located at 1805 Providence Avenue, Niskayuna, New York 12309. (Exhibit 1.) Although the Appellant may not need skilled nursing assistance, he requires assistance with activities of daily living. (Recording@ 5:45, 10:40.) Facility Social Worker Margaret Byrnes accordingly explored the possibility that the Appellant might be safely discharged to his home if home health aide or personal care assistance was in place. (Recording @ 6:53.) The Appellant and his family have made such a discharge plan impossible.

Ms. Byrnes has attempted to discuss discharge planning with both the Appellant and his ██████████ repeatedly since ██████████ 2018. However, his ██████████ refused to be trained to assist the Appellant with his activities of daily living, and the Appellant does not have home care assistance in place. (Exhibit 2; Recording @ 56:29.) The Appellant's unwillingness to re-apply for Medicaid coverage or pay privately for the assistance of a home health aide or personal care services aide renders discharge to his home unsafe. Because the Appellant's family is unwilling to cooperate in arranging for a discharge home, his transfer to another nursing home is the only available discharge plan. (Recording @ 1:02:17.) ██████████ will be able to provide the Appellant with all necessary assistance and care. (Recording @ 8:53.)

The Appellant's ██████████ opposed the proposed discharge location in ██████████ claiming that neither she nor her ██████████ would be able to visit him. (Recording @ 43:40.) Although she contended at the hearing that she and her family were "blindsided" by the Facility's determination, the Appellant's ██████████ had asked Ms. Byrnes to begin the discharge process for the Appellant. (Exhibit 2.) Despite her awareness of the Appellant's impending discharge and the basis for the Facility's determination, the Appellant's ██████████ did not attempt to identify other nursing homes located more closely to her home and did not discuss the Appellant's discharge with Ms. Byrnes. (Recording @ 44:10.)

Ms. Byrnes explained that procuring placement for the Appellant in another nursing home would be extremely difficult, if not impossible, due to his unwillingness to pay for the cost of his stay. (Recording @ 14:02.) She contacted seven local nursing homes in ██████████ County (where the Appellant's ██████████ and ██████████ reside) before contacting ██████████. The Appellant was not accepted by any of those facilities. (Recording @ 8:02.)

When presented with a list of the nursing homes contacted at the hearing, the Appellant's ██████████ noted that the Appellant was previously discharged from one of the contacted facilities for non-payment of his nursing home bill. (Recording @ 1:09:50.) The failure of the Appellant's family to communicate with Facility staff, despite care plan meetings and other attempted outreach on the Facility's part, has stymied the Facility's good faith attempts at securing a safe discharge location closer to his loved ones.

Of further note, despite the concerns expressed by the Appellant's ██████████ about visiting the Appellant in ██████████ork, the Appellant's other family members have proven capable of effectuating such travel arrangements. For instance, the Appellant's ██████████ participated in the hearing by telephone from ██████████ (where the Appellant's other ██████████ resides) because her car broke down. (Recording @ 40:30.) Publicly-available information shows that travel between ██████████ and ██████████ requires slightly over ██████████ hours each way, while travel between ██████████ and ██████████ requires more than ██████████ hours of driving one way. (See Google Maps, available at www.google.com.)

The parties were afforded two weeks in which to attempt to procure a placement for the Appellant in a nursing home located closer to his home. The Appellant's ██████████ was encouraged to actively participate in the discharge process and find nursing homes or other discharge locations which she believes would be acceptable. (Recording @ 52:21.)

On ██████████2, 2019, the Facility submitted an updated list of nursing homes contacted to attempt placement for the Appellant in a nursing home closer to the Appellant's ██████████ and ██████████ (Exhibit II.) Despite reaching out to an additional 13 nursing homes, Ms. Byrnes was unable to procure a transfer to a nursing home other than that set forth in the ██████████

2019 discharge notice. Distance alone does not render a discharge plan inappropriate when no alternatives are identified.

For more than one year, the Facility afforded the Appellant and his family the utmost courtesy and patience in attempting to collaborate in developing the Appellant's discharge plan. The Facility's obligation is to devise a discharge plan that addresses the Appellant's medical needs and how those needs will be met after discharge. 10 NYCRR § 415.3(h)(1)(vi). The Facility is not obligated to care for the Appellant indefinitely without remuneration until the Appellant and his family approve of a proposed discharge location. The Appellant and his family have continuously evaded responsibility, not only with respect to payment for the cost of the Appellant's nursing home stay, but also when afforded the opportunity to seek alternatives to the Appellant's discharge to a nursing home in ██████████.

The Appellant's family is free to continue searching for another nursing home willing to accept the Appellant and/or to identify another agreeable discharge plan. However, the Appellant cannot remain at the Facility while the family does so. The Facility's determination is affirmed.

DECISION

The Hamptons Center for Rehabilitation and Nursing has established that its determination to discharge the Appellant was permissible pursuant to 10 NYCRR § 415.3(h)(1)(i)(b) and that the discharge plan is appropriate.

Dated: September 18, 2019
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge