Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan SAPA File
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ANDREW M. CUOMO Governor HOWARD A. ZUCKER, M.D., J.D. Commissioner

LISA PINO, M.A., J.D. Executive Deputy Commissioner

July 29, 2021

CERTIFIED MAIL/RETURN RECEIPT

c/o Eastchester Rehabilitation & Health Care Center 2700 Eastchester Road Bronx, New York 10469 Horacio Rodriguez
Eastchester Rehabilitation
& Health Care Center
2700 Eastchester Road
Bronx, New York 10469

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: cmg Enclosure

STATE OF NEW YORK: DEPARTMENT OF HEALTH

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

Appellant,

COPY

DECISION

from a determination by

Eastchester Rehabilitation & Health Care Center,

Respondent,:

to discharge him from a residential health care facility.

Hearing Before:

Ann Gayle

Administrative Law Judge

Held:

Via Cisco Webex

Hearing Date:

June 29, 2021 (rescheduled from June 24, 2021)

Record closed July 27, 2021

Parties:

Eastchester Rehabilitation & Health Care Center

By: Horacio Rodriguez

By:

Pursuant to Public Health Law ("PHL") §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("10 NYCRR") §415.2(k), a residential health care facility or nursing home such as Eastchester Rehabilitation & Health Care Center ("Eastchester," "Respondent" or "Facility") is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(i). Respondent determined to discharge ("Appellant" or "Resident") from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(i)(1)(i)(b), which provides, in pertinent part:

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.

Appellant appealed the discharge determination to the New York State Department of Health and a hearing on that appeal was held. Pursuant to §415.3(i)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate; the standard of proof is substantial evidence. State Administrative Procedure Act §306.1.

A recording of the hearing was made part of the record. Appellant appeared and testified on his own behalf. Appellant's represented and assisted Appellant and testified. The following witnesses testified for Respondent: Social Worker Horacio Rodriguez, Medicaid Coordinator Felicita Rivera, and Administrator Nathaniel Gordon. Social Work Director Inez Green also participated.



The following documents were accepted into evidence by the Administrative Law Judge ("ALJ") as ALJ, Facility, and Appellant Exhibits:

ALJ

- I: Notice of Hearing with attached Notice of Discharge/Transfer
- II: , 2021 letter

Facility:

- 1: Budget letters and bills
- 2: Social Services progress notes and Cognitive Evaluation

Appellant:

- A: Page 5 of Medicaid letter two views
- B: May 21, 2021 Fair Hearing Request
- C: Fair Hearing receipt

ISSUE

Has Eastchester Rehabilitation & Health Care Center established that the discharge is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony ("T") and exhibits ("Ex") found persuasive in arriving at a particular finding.

- 1. Respondent, Eastchester Rehabilitation & Health Care Center, is a residential health care facility located in Bronx, New York. (Ex I; Ex 1)
- 2. Appellant, age , was admitted to the Facility in 2018. The local Medicaid office established Appellant's NAMI (Net Available Monthly Income) to be \$ per month effective 2019 (Ex 1, page 2), and \$ per month effective 2020 (Ex 1, page 6). Respondent's invoice for the period 2020 (Ex 1, page 7-8)

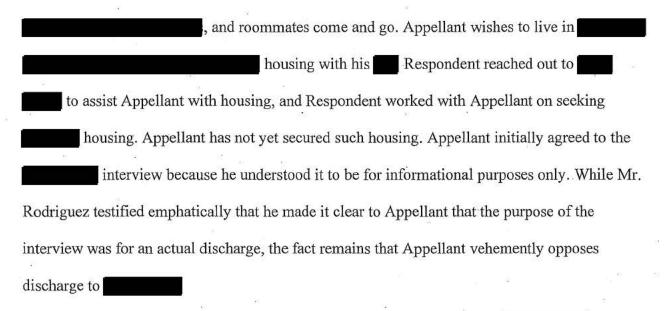
reflects billing of \$ per month from 20 to 21, with some adjustments. Respondent provided Appellant with bills and explained NAMI. (Ex 1; Ex 2; T Rivera)

- 3. By notice dated ______, 2021 ("discharge notice"), Respondent advised Appellant that it had determined to discharge him on the grounds of failure to pay for his stay at the Facility. The discharge location is _______ located at _______ located at _______ and would assist Appellant with his medications, community medical appointments including _______ treatment three times weekly, ADLs (activities of daily living), and recreational and social services. (Ex 2; T Rodriguez)
- 4. Appellant has remained at the Facility pending the outcome of this proceeding.

DISCUSSION

It is a resident's responsibility and obligation to pay for a stay at a facility. Respondent proved that during the course of Appellant's stay at the Facility, Facility representatives discussed with and explained to Appellant that he was responsible to pay the monthly NAMI to the Facility. Appellant has expressed that he will not pay his NAMI because he believes he is entitled to keep the Social Security income he receives for having worked hard his whole life. Appellant has not made NAMI payments to the Facility. Appellant's acknowledged that funds are due the Facility, and Administrator Gordon testified that "if he had offered to pay anything, we would not be here today." Respondent has established that a substantial amount (approximately \$ as of 2021) is due the Facility.

Appellant participated in a video interview with and and accepted and accepted Appellant. On the day of discharge, Appellant and his requested an appeal of the discharge notice. Appellant testified that he does not wish to remain in a long-term care facility where he



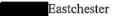
Testimony at the hearing revealed that: Respondent did not know would accept Appellant as an involuntary discharge resident; Appellant and Respondent were willing to work with each other on a payment plan that would enable Appellant to remain in the Facility; and there was no date for Appellant's Medicaid fair hearing request. The record remained open at the conclusion of the June 29 hearing to give the parties the opportunity to further explore those issues and options.

On a July 27, 2021 conference call¹ the parties reported that: the Medicaid fair hearing was no longer an issue, Respondent still did not know if would accept Appellant without Appellant's consent, and the parties have not reached a payment agreement but they would continue to discuss payment.

CONCLUSION

Respondent has proven that Appellant has failed, after reasonable and appropriate notice, to pay his portion of his stay at the facility. Appellant's NAMI is available, and Appellant has

¹ Barbara Phair, Esq., who did not represent Respondent at the hearing or participate in previous conference calls along with (or as representative of) Eastchester, participated in the July 27 conference call.



not made payment since a NAMI budget was established. Respondent has also proven that

Assisted Living Facility is an appropriate discharge location for Appellant.

DECISION

I find that the Facility has proved that the discharge is necessary and the discharge location is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Eastchester Rehabilitation & Health Care Center, is authorized to discharge Appellant in accordance with the 2021 Transfer/Discharge Notice. The discharge shall occur no sooner than 2021, in order to give the parties the opportunity to discuss and reach a payment agreement, and to ascertain will accept Appellant involuntarily.

Appellant may leave the Facility sooner than 2021, if he wishes to be discharged to if another location suitable and acceptable to him is secured prior to that date, or for any other reason Appellant chooses to leave.

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: New York, New York July 28, 2021

FInn Gayle

Ann Gayle Administrative Law Judge

TO:

c/o Eastchester Rehabilitation & Health Care Center 2700 Eastchester Road Bronx, New York 10469

Horacio Rodriguez Eastchester Rehabilitation & Health Care Center 2700 Eastchester Road Bronx, New York 10469