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# Department of Health

KATHY HOCHUL  
Governor

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

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

April 1, 2022

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Terence Cardinal Cooke HCC  
1249 Fifth Avenue  
New York, New York 10029

Vickey Johnson  
Terence Cardinal Cooke HCC  
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

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

██████████ ██████████

Appellant,

from a determination by

TERENCE CARDINAL COOKE  
HEALTH CARE CENTER

to discharge her from a residential health care facility.

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COPY

DECISION

Before: Tina M. Champion  
Administrative Law Judge

Held at: Videoconference via WebEx

Dates: February 7, 2022  
February 14, 2022  
March 11, 2022

Parties: ██████████ ██████████  
Terence Cardinal Cooke Health Care Center  
1249 Fifth Avenue  
New York, New York 10029  
By: ██████████ ██████████ ██████████

Terence Cardinal Cooke Health Care Center  
1249 Fifth Avenue  
New York, New York 10029  
By: Vickey Johnson, Director of Finance

**JURISDICTION**

By notice dated [REDACTED] 2022, Terence Cardinal Cooke Health Care Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the 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.

Evidence was received and witnesses were examined. A digital recording was made of the proceeding.

**HEARING RECORD**

ALJ Exhibits: I – Letter with Notice of Hearing and Transfer/Discharge Notice [REDACTED]/22)

Facility Exhibits: 1 – Medicaid Budget Letter  
2 – Invoice dated [REDACTED]/2022  
3 – Conversation Log  
4 – Invoice dated [REDACTED]/2021

Appellant Exhibits: None

Facility Witnesses: Vickey Johnson, Director of Finance  
Stevenson Andre, Director of Social Services

Appellant Witnesses: [REDACTED] [REDACTED] [REDACTED] of Appellant

### FINDINGS OF FACT

1. The Appellant has been a resident at the Facility since [REDACTED] 2021. (Testimony [T.] Johnson.)
2. The Appellant was receiving Medicare and was covered by private insurance upon admission to the Facility. She exhausted her Medicare benefits as of [REDACTED] 2021. (T. Johnson.)
3. The Appellant applied for Medicaid in [REDACTED] 2021 and was approved. The Appellant also began receiving social security benefits in [REDACTED] 2021. (T. Johnson.)
4. The Appellant is responsible for paying a net allowable monthly income (NAMI) of \$ [REDACTED] for the month of [REDACTED] 2021 and \$ [REDACTED] for months thereafter to the Facility. (Facility Exhibit [Ex.] 1; T. Johnson.)
5. The Appellant was made aware of the amount owed to the Facility monthly, and invoices were provided directly to her as well as emailed to her [REDACTED]. (T. Johnson.)
6. As of [REDACTED], 2022, the Appellant owed the Facility NAMI payments totaling \$ [REDACTED] (Facility Exs. 1, 2, 4; T. Johnson.)
7. On [REDACTED] 2022, the Facility issued a Transfer/Discharge Notice to the Appellant which proposed discharge to [REDACTED] Nursing Home in the [REDACTED]. (ALJ Ex. I.)
8. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant has failed to pay for her stay at the Facility. (ALJ Ex. I.)
9. The Appellant timely appealed the Facility's discharge determination.
10. 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

#### Reason for Discharge

It is undisputed that the Appellant owed the Facility \$ [REDACTED] as of [REDACTED] 2022. The Facility made multiple attempts to collect this payment from the Appellant. (Facility Ex. 3; T. Johnson.) The hearing in this matter was adjourned twice after commencement on February 7, 2022 to allow for settlement conversations and for payment according to a schedule that the parties agreed upon on during those conversations. Payment did not occur. The Facility has shown that they have provided reasonable and appropriate notice to the Appellant that her NAMI is due and owing and Appellant has failed to pay for her stay. Therefore, discharge is appropriate for nonpayment.

#### Discharge Location

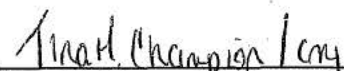
The Facility has proposed discharge to [REDACTED] Nursing Home in the [REDACTED] [REDACTED]. The proposed discharge location is a skilled nursing facility and is approximately [REDACTED] minutes away from Terence Cardinal Cooke when traveling by vehicle. The Appellant ultimately wants to return home but needs skilled nursing care until a safe discharge plan to home can be put into place. The proposed discharge location will provide the same services to the Appellant that she currently receives at the Terence Cardinal Cooke, including transportation to receive [REDACTED] three times a week. (T. Johnson, Andre.) I find that the discharge location is appropriate for the Appellant.


**DECISION**


Terence Cardinal Cooke Health Care Center has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Terence Cardinal Cooke Health Care Center is authorized to immediately discharge the Appellant in accordance with its discharge plan.
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  
April 1, 2022

  
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Tina M. Champion  
Administrative Law Judge

TO:   
c/o Vickey Johnson  
Terence Cardinal Cooke Health Care Center  
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New York, New York 10029

  
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