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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

July 21, 2022

CERTIFIED MAIL/RETURN RECEIPT

Stevenson Andre, Director of Social Work
Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10002

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

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,

Sean D. O'Brien
Acting Chief Administrative Law Judge
Bureau of Adjudication

SDO: nm
Enclosure

STATE OF NEW YORK: DEPARTMENT OF HEALTH

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

██████████

Appellant,

COPY

from a determination by

DECISION

TERENCE CARDINAL COOKE

Respondent,

to discharge him from a residential health care facility.

Hearing Before:

Jean T. Carney
Administrative Law Judge

Held via:

Cisco WebEx videoconference

Hearing Date:

July 14, 2021

Parties:

Terence Cardinal Cooke, Respondent
By: Stevenson Andre
Director of Social Work
andres@archcare.org

██████████ ██████████ Appellant, *pro se*

JURISDICTION

By notice dated [REDACTED] 2022, Terence Cardinal Cooke (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] [REDACTED] (Appellant) from the Facility and place him in another residential care facility. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i).

HEARING RECORD

ALJ Exhibits:	I – Notice of Hearing II – Invoices from [REDACTED] through [REDACTED] 2022
Facility Exhibits:	1 – Medicaid Approval Letter 2 – Invoice dated [REDACTED]/2022 3 - Financial Notes
Facility Witnesses:	Nadine Sam, Patient Accounts Manager
Appellant Exhibits:	None
Appellant Witness:	[REDACTED] [REDACTED] Appellant

The hearing was digitally recorded and made part of the record.

ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (T) and exhibits (Exh) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was rejected in favor of cited evidence. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is an [REDACTED]-year-old male who was admitted to the Facility for long term care on [REDACTED] 2021. (T [REDACTED] 46 min; Exh 3).

2. On [REDACTED] 2022, the Appellant's Medicaid's application was accepted for the period of [REDACTED], 2021 to [REDACTED], 2022. The Appellant's Net Available Monthly Income (NAMI) was calculated as \$ [REDACTED] each month for the months of [REDACTED] 2021 to [REDACTED] 2022; and \$ [REDACTED] for each month thereafter. The NAMI is the amount Medicaid allows a facility to charge a resident for their stay at the facility. (Exh 1; T Sam @26 min).

3. The Facility made numerous attempts to explain his financial obligations under the Medicaid program; and delivered invoices to the Appellant in [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] of 2022. The Facility charged the Appellant \$ [REDACTED] in [REDACTED], and [REDACTED]. The facility charged the Appellant \$ [REDACTED] for the months of [REDACTED]. (ALJ II; Exh 2; T Sam @29 min).

4. The Appellant admits receiving the invoices; but refuses to pay his NAMI. ([REDACTED])

5. The Appellant has been accepted at [REDACTED], another residential health care facility in the same geographic area that will provide the same level of care as Terence Cardinal Cooke. (ALJ I).

APPLICABLE LAW

A residential health care facility, also referred to as a nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. (Public Health Law §§ 2801[2] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(4)(b), a resident may be discharged when the resident has failed to pay for a stay at the facility after being given reasonable and appropriate notice. If a resident becomes eligible for Medicaid, the facility may only charge the amount allowed by Medicaid. (10 NYCRR § 415.3[i][4][b]).

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). 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[1984]).

DISCUSSION

The Facility alleges that the Appellant has failed to pay for his stay after being given reasonable notice that payment is due. The proposed discharge location is an affiliated nursing home that will provide the same level of care. The Facility has presented sufficient evidence that the Appellant's discharge is necessary, and the discharge plan is appropriate.

The evidence shows that the Appellant was required to pay his portion of his stay at the facility, also known as his NAMI. The Facility provided him with invoices every

month, and the Appellant acknowledges that he received those invoices. The evidence further shows that the Facility did not charge the Appellant more than was allowed by Medicaid. In fact, the monthly invoices charged the Appellant [REDACTED] less each month than the Appellant's NAMI.

The Appellant testified that he did not know he was required to pay a NAMI for his stay at the Facility. However, after receiving the invoice for [REDACTED] the Appellant complained to the Facility about being charged for the entire month, when he was only admitted on the last day of [REDACTED]. Therefore, the Appellant either knew or should have known that the invoices given to him by the Facility were his responsibility to pay. The Appellant also contended that his [REDACTED], and he could not read the evidence that he acknowledged receiving on [REDACTED] 2022. (T [REDACTED] @51 min). However, the Appellant read a prepared statement into the record, and testified to googling FOIL requests on a smartphone. Therefore, his assertion that he could not read the invoices, or the letter from Medicaid regarding his NAMI, hold little weight. The Appellant's remaining arguments do not overcome the fact that he was presented with invoices for payment for his portion of his stay at the Facility, that he refused to pay for his stay, and after giving reasonable notice, the Facility informed him of their intent to transfer him to another nursing home.


Terence Cardinal Cooke has established that its determination to discharge the Appellant was correct, and that transfer to [REDACTED] nursing home is appropriate.

DECISION

1. The Appellant's request is denied, and the facility is authorized to transfer the Appellant pursuant to the Discharge Notice dated [REDACTED] 2022.
2. This Decision may be appealed to a court in the appropriate jurisdiction.

3. This Decision shall become effective upon service to the parties.

DATED: Albany, New York
July 21, 2022


JEAN T. CARNEY
Administrative Law Judge

TO: Stevenson Andre, Director of Social Work
Terence Cardinal Cooke
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New York, New York 10002
andres@archcare.org

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