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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

January 27, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Amsterdam Nursing Home
1060 Amsterdam Avenue
New York, New York 10025

Melissa Boone, DSW
Amsterdam Nursing Home
1060 Amsterdam Avenue
New York, New York 10025

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Tamara Stack, Esq.
The Law Offices of Stack & Assoc., PLLC
355 Lexington Avenue, Suite 401
New York, New York 10017

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,

Natalie J. Bordeaux /cmg

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

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

██████████ ██████████

Appellant,

from a determination by

Amsterdam Nursing Home Corp,

Respondent,

to discharge Appellant from a residential health care facility.

COPY

DECISION

Before: Rayanne L. Babich
Administrative Law Judge (ALJ)

Date: January 17, 2023

Held at: New York State Department of Health
Webex videoconference

Parties: ██████████ ██████████ Appellant
c/o Amsterdam Nursing Home Corp
1060 Amsterdam Avenue
New York, New York 10025

By: Tamara Stack, Esq.
The Law Offices of Stack & Associates, PLLC
355 Lexington Avenue, Suite 401
New York, New York 10017

Amsterdam Nursing Home Corp
1060 Amsterdam Avenue
New York, New York 10025

By: Melissa Boone, Director of Social Work

JURISDICTION

By notice dated ██████████ 2022, Amsterdam Nursing Home Corp (Facility),
determined to discharge ██████████ ██████████ (Appellant), from care in its Facility. 10 NYCRR

415.3(i)(1)(iii)(a). The Appellant appealed the proposed discharge. 10 NYCRR 415.3(i)(2). The Appellant's attorney appeared at the hearing on his behalf.

RECORD

ALJ Exhibit [Ex]: I – Notice of Discharge, [REDACTED] 2022
Facility Exhibits: 1 – Facility summary
2 – [REDACTED] proof of pension income
3 – [REDACTED] proof of social security income
4 – Facility statement of charges, [REDACTED] 2023
5 – Emails, [REDACTED], 2022 and [REDACTED] 2023; with attached Medicaid chronic care budget, [REDACTED], 2022 and Notice of Denial, [REDACTED], 2020
6 – Medicaid budgets, [REDACTED] and [REDACTED], 2022
Appellant Exhibits: None
Facility Witnesses: Shira Zevi, Director of Finance
Lillian Monge, Facility Medicaid Coordinator
Melissa Boone, Director of Social Work
Appellant Witnesses: None

The hearing was digitally recorded. [R. 2:01:29.]

FINDINGS OF FACT

1. Amsterdam Nursing Home Corp is a residential health care facility (nursing home). [Ex I.]
2. The Appellant was admitted to the Facility on [REDACTED], 2022 for short-term rehabilitation services. Prior to his admission, the Appellant received community Medicaid benefits. The Appellant's [REDACTED] serves as his representative. [Ex 1, 6; R. 35:44.]
3. The Appellant receives physical and occupational therapy and medication management. He requires the assistance of another person to complete his activities of daily living and uses a walker to ambulate. [R. 1:50:14.]
4. The cost of Appellant's care was covered by Medicare from the date of admission through [REDACTED], 2022. [Ex 6; R. 36:05.]

5. On or about [REDACTED], 2022, the Facility submitted a supplemental Medicaid application on behalf of the Appellant per his representative's request to convert his community Medicaid benefits to cover the cost of his care at the Facility. [Ex 6; R. 51:51.]
6. On [REDACTED] 2022, Medicaid issued a chronic care budget letter to the Facility that showed the Appellant's Net Adjusted Monthly Income (NAMI) was \$ [REDACTED] beginning [REDACTED] 2022. [Ex 6.]
7. On or about [REDACTED], 2022, the Facility submitted a request to Medicaid to reduce the Appellant's NAMI because the Appellant has a [REDACTED] residing in the community. [Ex 1; R. 41:58.]
8. On [REDACTED], 2022, Medicaid issued a revised chronic care budget letter to the Facility that stated the Appellant's NAMI is \$ [REDACTED] and effective [REDACTED], 2022. [Ex 6.]
9. On or about [REDACTED], 2022, the Facility sent a second request to Medicaid seeking a reduction of the NAMI based on the [REDACTED] income. [Ex 5; R. 1:31:23.]
10. The Facility issued a Notice of Discharge on [REDACTED], 2022 stating that the grounds for discharge are the Appellant has "failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility." The Facility has proposed to transfer the Appellant to [REDACTED], in [REDACTED]. The discharge location is a nursing home that provides the same services as the Facility. [Ex I; R. 1:51:44.]
11. On [REDACTED] 2023, Medicaid responded to the second request by email stating that the request for an adjustment of the NAMI was denied based on a prior "[REDACTED] refusal" filed in 2020. The Appellant's NAMI of \$ [REDACTED] remains unchanged. [Ex 5; R. 1:40:41.]

12. Prior to the hearing, the Facility had not issued any form of written invoice or statement of charges to the Appellant or his representative. [Ex 4; R. 1:05:30, 1:20:53.]

ISSUES

Has the Facility met its burden of proving that the discharge is necessary because the Appellant has failed to pay for his stay and that the discharge plan is appropriate?

APPLICABLE LAW

1. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(i), which provides, 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. 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. 10 NYCRR 415.3(i)(1)(i)(b).
2. The Facility has the burden of proving that the "discharge or transfer is/was necessary and the discharge plan appropriate." 10 NYCRR 415.3(i)(2)(iii)(b).

3. Federal regulations at 42 CFR 483.15 contain substantially identical provisions to the forgoing provisions of 10 NYCRR 415.3(i).

DISCUSSION

The Facility is seeking to discharge the Appellant on the grounds that he or his representative has failed to pay the NAMI charges. The Appellant was admitted to the Facility for short-term care on [REDACTED], 2022 and his Medicare benefit paid for his stay through [REDACTED] 2022. [Ex 1, 6; R. 35:44.] Once it became apparent the Appellant required on-going custodial care, and upon his representative's request, the Facility submitted a supplemental Medicaid application to convert the Appellant's community Medicaid benefits to cover the cost of his nursing home care. [Ex 6; R. 51:51.]

Shira Zevi, the Director of Finance for the Facility, testified that she gathered income information and documentation from the Appellant's representative and advised her that the Facility was seeking a \$ [REDACTED] NAMI payment. [R. 33:03; 37:12.] Upon receipt of the first budget letter from Medicaid, showing a monthly NAMI payment of \$ [REDACTED] as of [REDACTED], 2022, Ms. Zevi informed the Appellant's representative that a request was being submitted to reduce this payment. [R. 40:23.] The Facility advised the Appellant's representative that it was waiting for an updated budget letter from Medicaid. [R. 41:25.]

Lillian Monge, Medicaid Coordinator for the Facility, testified that after the first budget letter was received from Medicaid, she submitted two requests overall to Medicaid to reduce the NAMI payment because those funds were necessary for his [REDACTED] living in the community. [R. 51:14, 1:03:33.] Medicaid not only denied these requests, but also increased the monthly NAMI

payment by almost \$ [REDACTED] because it determined it has previously miscalculated the NAMI on the [REDACTED] budget letter. [Ex 6; R. 1:04:13.]

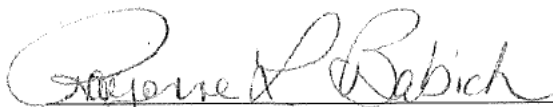
The Facility remained in telephone contact with the Appellant's representative and communicated the attempts being made to reduce the monthly NAMI payment. [R. 41:58, 1:12:44.] Despite these efforts, the Facility did not clearly communicate the amount owed and presented no evidence to prove that the Appellant's representative was provided with any form of a written billing statement or invoice showing a balance due or that she was provided with either of the two Medicaid budget letters. [R. 44:31, 1:14:27.] The only billing statement provided to the Appellant representative's was created on [REDACTED], 2023 in preparation for the hearing. [Ex 4; R. 1:07:27.] However, it was not until the hearing that Ms. Monge confirmed that the [REDACTED] billing statement contained erroneous charges; the balance listed as \$ [REDACTED] is incorrect and the actual balance is \$ [REDACTED] [Ex 4; R. 1:07:14.]

The Appellant may be discharged from the Facility if after receiving "reasonable and appropriate notice" he has failed to pay for his stay. 10 NYCRR 415.3(i)(1)(i)(b). Grounds for discharge have not been established because the Facility failed to provide the Appellant or his representative with reasonable and appropriate notice that a balance is due. Given that the Facility has failed to meet its burden to prove these grounds, a decision has not been reached on whether the proposed discharge plan is appropriate.

ORDER

1. The Facility is not authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED], 2022.
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: January 27, 2023
Albany, New York



Rayanne L. Babich
Administrative Law Judge

TO:

██████████ Appellant
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