



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

April 11, 2018

CERTIFIED / RETURN RECEIPT



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Maggie Ganon, DSW
The Shore Winds
425 Beach Avenue
Rochester, New York 14612



C/o The Shore Winds
425 Beach Avenue
Rochester, New York 14612

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 / CAC
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
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 Shore Winds, LLC

Respondent,

to discharge him from a residential
health care facility.

COPY

Decision
After Hearing

Hearing before: John Harris Terepka
Administrative Law Judge

Held at: The Shore Winds
425 Beach Avenue
Rochester, New York 14612

Hearing date: April 10, 2018

Parties: The Shore Winds, LLC
425 Beach Avenue
Rochester, New York 14612
By: Katerina M. Kramarchyk, Esq.
Patrick Pullano, Esq.
Pullano & Farrow
69 Cascade Drive, Suite 307
Rochester, New York 14614

[REDACTED]

The Shore Winds
425 Beach Avenue
Rochester, New York 14612

By: [REDACTED]

JURISDICTION

The Shore Winds (the Respondent), a residential health care facility subject to Article 28 of the Public Health Law, determined to discharge [REDACTED] (the Appellant) from care and treatment in its nursing home. Pursuant to 10 NYCRR 415.3, the Appellant appealed the discharge determination to the New York State Department of Health.

SUMMARY OF FACTS

1. Respondent The Shore Winds is a residential health care facility, or nursing home, located in Rochester, New York. Appellant [REDACTED] was admitted to the facility in 2013. He suffers from [REDACTED]. (Exhibits 3, 5.)
2. Since his admission in 2013, the Appellant has been eligible for Medicaid coverage for his nursing home care. Because he has other income, specifically Social Security and pension income, he is also required to pay a monthly contribution, the "net available monthly income" (NAMI), for the cost of his care. Since early 2014, the Appellant's required monthly contribution has been in excess of [REDACTED] (Exhibit 1.)
3. Since his admission the Appellant has made sporadic payments to meet his monthly contribution for his care, but the balance due has steadily risen. The Respondent has repeatedly advised the Appellant and his [REDACTED] of their failure to pay his full monthly contribution for his stay at the facility yet relatively minimal amounts toward the growing balance have been paid. (Exhibits 1, 2, 3.)
4. The balance owed by the Appellant to the Respondent as of [REDACTED] 2018 was [REDACTED] (Exhibit 1.)

5. By notice date [REDACTED] 2018, the Respondent advised the Appellant that it has determined to discharge him on [REDACTED] 2018, on the grounds that he has failed, after reasonable and appropriate notice, to pay for his stay at the facility. (Exhibit ALJ I.)

6. The Appellant continues to require nursing home care. The Respondent's discharge plan is to transfer him to [REDACTED] a nursing home in [REDACTED] offering a similar level of care to that provided at The Shore Winds. [REDACTED] has agreed to admit him. (Exhibit 4.) The Respondent's discharge plan includes arrangements for transfer, medications and other logistical assistance to be provided as needed. (Exhibit 5.)

7. The Appellant remains at The Shore Winds pending the outcome of this proceeding.

ISSUES

Has the Respondent established that the transfer is necessary and the discharge plan appropriate?

DISCUSSION

A residential health care facility (RHCF), or nursing home, 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. PHL 2801; 10 NYCRR 415.2(k).

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR 415.3(h). The Respondent relies on 10 NYCRR 415.3(h)(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.

The Respondent presented documentary evidence (Exhibits 1-5) and testimony from its Director of Social Work, Maggie Ganon. The Appellant's [REDACTED] and representative at the hearing, [REDACTED] also testified. The Appellant's [REDACTED] [REDACTED] was well aware of this hearing but failed to appear. All parties agreed that the Appellant would not be able to meaningfully participate, and he was not present. A digital recording of the hearing was made. The Respondent has the burden of proving that the transfer is necessary and the discharge plan appropriate. 10 NYCRR 415.3(h)(2)(iii).

For the last few years the Appellant's health care and financial matters have been managed by his [REDACTED]. They and their [REDACTED] were making sporadic payments on the Appellant's behalf to the Respondent (Exhibit 1), but nowhere near enough to cover the full NAMI amounts. The Respondent presented an account showing the Appellant's running balance with The Shore Winds has grown steadily since [REDACTED] 2013. (Exhibit 1.) The Appellant does not dispute the accuracy of the Respondent's accounting of the charges and the balance owed.

The evidence is uncontroverted and fully supports the Respondent's claim that the balance due as of [REDACTED] 2018 was [REDACTED]. Arrangements have recently been made for the NAMI to be paid directly to the Respondent as "representative payee," but the

outstanding balance has not been paid nor have the parties been able to reach an agreement that might address it and enable the Appellant to remain at the Shore Winds. The Respondent has met its burden of establishing valid grounds for discharge pursuant to 10 NYCRR 415.3(h)(1)(i)(b).

With regard to the appropriateness of the discharge plan, there is no dispute that the Appellant continues to require nursing home care. The Respondent proposes to transfer him to [REDACTED], another nursing home providing a similar level of care to The Shore Winds. [REDACTED] did not dispute the testimony of The Shore Winds' Director of Social Work, Maggie Ganon, that [REDACTED] is an appropriate residential health care facility offering an appropriate level of care. [REDACTED] did express concerns that the Appellant might find a move disruptive and difficult, and that visiting would be more difficult for family because [REDACTED] is [REDACTED] drive from their homes in [REDACTED].

While the Respondent apparently did not involve the Appellant or his [REDACTED] in the development of the discharge plan before the notice of discharge was served, the Appellant's [REDACTED] have been well aware of the discharge location since receiving the notice in [REDACTED] 2018, and have demonstrated little interest in identifying an alternative plan. Although the Appellant and his family are encouraged to pursue a relocation to any other facility of their choosing, they are not entitled to require the Respondent to continue to provide care while they do so, with such a large unpaid bill and an appropriate discharge plan in place. The proposed transfer to [REDACTED] a facility with a similar level of care, meets the Respondent's obligation to provide an appropriate discharge plan.

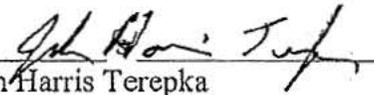
At the hearing, both parties indicated a willingness to explore the possibility of yet resolving this matter by agreeing to a payment arrangement that would allow the Appellant to remain at The Shore Winds, or by securing a different discharge location. A certified Long Term Care Ombudsman, Alana Russell, LCSW, participated in this hearing and undertook to assist and facilitate this process on the Appellant's behalf. The proposed discharge date will be stayed from [REDACTED] to [REDACTED] 2018 in order to afford the interested parties an opportunity to resolve the financial issues or to develop an alternative discharge plan.

DECISION: Respondent The Shore Winds has established valid grounds for the discharge of Appellant [REDACTED] and has established that the discharge plan is appropriate.

The Respondent is authorized to discharge the Appellant on or after [REDACTED] 2018, in accordance with the discharge notice and discharge plan presented at this hearing.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York
April 11, 2018


John Harris Terepka
Administrative Law Judge