



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

M.N.,	:	
	:	
PETITIONER,	:	ADMINISTRATIVE ACTION
	:	
v.	:	FINAL AGENCY DECISION
	:	
ALLAIRE REHAB AND NURSING,	:	OAL DKT. NO. HMA 4233-2016
	:	
RESPONDENT.	:	

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision and the documents in evidence. Neither party filed exceptions. Procedurally, the time period for the Agency Head to file a Final Agency Decision in this matter is January 5, 2017, in accordance with an Order of Extension.

This matter concerns Petitioner's notice of involuntary discharge dated March 3, 2016 from Allaire Rehab and Nursing due to failure to pay his private pay charges. While Petitioner is eligible for Medicaid benefits, it was determined that as of September 2015 his medical conditions did not require nursing home level of care. Petitioner's

application for disability benefits has also been denied by the Social Security Administration. ID at 3.

The Initial Decision found that the notice was deficient and held that Petitioner could not be discharged until "such time as an appropriate invoicing, and discharge notice be served on petitioner; and an appropriate discharge location and plan is finalized; and Allaire Rehab complies with the requirements N.J.A.C. 8:39-4.1." ID at 7. Additionally, Allaire Rehab appeared at the fair hearing without an attorney or non-lawyer principal of a closed corporation pursuant to N.J.A.C. 1:1-5.4. For the reasons that follow, I hereby ADOPT the Initial Decision.

The case turns on the adequacy of the notice and the validity of the documents to support the discharge. The ALJ found that the documents present by Allaire Rehab could not be placed into evidence as there was no witness at the hearing who could identify them nor were the documents prepared in the normal course of business. ID at 5.

Federal law is clear that a "nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless— . . . (iii) (I) for transfers or discharges effected on or after October 1, 1989, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3) of this section." 42 U.S.C. § 1396r. That subsection requires "a fair mechanism, meeting the guidelines established under subsection (f)(3) of this section, for hearing appeals on transfers and discharges of residents of such facilities; but the failure of the Secretary to establish such guidelines under such subsection shall not relieve any State of its responsibility under this paragraph." 42 U.S.C. § 1396r(e)(3).

In turn the Centers for Medicare and Medicaid Services' (CMS) regulations regarding

the adequacy of the notice require that the location where the resident will be discharged be included. 42 U.S.C. § 483.12(a)(6)(iii). That was not done in this case.

Due to the deficiencies in the notice as well as the evidentiary and procedural problems noted by the ALJ, I hereby ADOPT the Initial Decision but note that Allaire Rehab may cure these issues with a proper notice and correct representation at a subsequent hearing.

THEREFORE, it is on this 23rd day of DECEMBER 2016

ORDERED:

That the Initial Decision is hereby ADOPTED.

Matthew Shaw / *MS* ON BEHALF OF
CFO _____
Meghan Davey, Director
Division of Medical Assistance
and Health Services