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**DEPARTMENT OF HUMAN SERVICES**

Division of Medical Assistance and Health Services

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**GREGORY WOODS**  
Assistant Commissioner

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

S.G.,

PETITIONER,

v.

DIVISION OF MEDICAL ASSISTANCE :

AND HEALTH SERVICES AND :

JEWISH HOME AT ROCKLEIGH, :

RESPONDENTS. :

**ADMINISTRATIVE ACTION**

**FINAL AGENCY DECISION**

**OAL DKT. NO. HMA 11664-24**

As Assistant Commissioner for the Division of Medical Assistance and Health Services (DMAHS), I have reviewed the record in this case, including the OAL case file, the documents in evidence, and the Initial Decision in this matter. Neither party filed exceptions. Procedurally, the time period for the Agency Head to render a Final Agency Decision is February 6, 2025, in accordance with an Order of Extension.

This matter arises from the involuntary discharge of Petitioner from Jewish Home at Rockleigh (the Facility) due to failing to assign their Social Security Benefits to the Facility or to pay the Facility for their stay. The issue presented here is whether

Petitioner's involuntary discharge from the Facility is appropriate under 42 C.F.R. §483.15(c).

The regulations surrounding an involuntary discharge lie at the federal level as they apply to all nursing facility residents regardless of payor source. 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 certain conditions be met. 42 C.F.R. § 483.15(c). The federal regulations require that notice be given in writing no less than thirty days prior to the date of discharge or transfer. 42 C.F.R. §483.15(c)(4)(i).

Moreover, a resident cannot be transferred unless:

- (A) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- (C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident;
- (D) The health of individuals in the facility would otherwise be endangered;
- (E) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a

facility, the facility may charge a resident only allowable charges under Medicaid; or  
(F) The facility ceases to operate.

42 C.F.R. § 483.15(c)(1)(i)

Except as specified in paragraphs (c)(4)(ii) and (8) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged. Furthermore, the facility may not transfer or discharge the resident while the appeal is pending, pursuant to §431.230 of this chapter, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to §431.220(a)(3) of this chapter, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. 42 C.F.R. §483.15(c)(4)(i).

Additionally, N.J.A.C 8:85-1.10, provides that a Medicaid beneficiary who has not consented to transfer may be considered for an involuntary transfer under limited circumstances, including when “[t]he transfer is required because the resident has failed, after reasonable and appropriate notice, to reimburse the NF [nursing facility] for a stay in the facility from his/her available income as reported . . . .” N.J.A.C. 8:85-1.10(e)(3). N.J.A.C. 8:85-1.10(e) also provides that a Medicaid beneficiary can only be involuntarily transferred when “adequate alternative placement, acceptable to the Department, is available.”

On or around May 11, 2023, the Facility and the Petitioner entered into an Admission Agreement, which the Petitioner signed. ID at 2. The Petitioner was admitted to the Facility as a Medicaid recipient. The Admission Agreement provides that when a resident is admitted to the Facility under the Medicaid Program, “all supplemental income, Social Security, pensions, etc., must be assigned to the Facility at the beginning of each month to be applied towards the Resident’s account.” (R-1, pg. 7.) The Agreement also

requires that the resident make applications for third-party payments on a timely basis. ID at 2. While the Petitioner maintains that they did not read the entire Admission Agreement before signing, they testified that they were provided with the ability to read and review the Admission Agreement before signing. Ibid.

The Petitioner received monthly Social Security benefits in the amount of \$2,253 from May 2023 through December 2023, and \$2,325 beginning in January 2024. Ibid. The Facility asserts that, as a Medicaid recipient, the Petitioner is required to assign their Social Security benefits to the Facility, with the exception of a \$50 monthly personal allowance. Ibid. This was discussed with both the Petitioner and their children. In the Initial Decision, the Administrative Law Judge found that while the Petitioner testified that they were never asked to assign their Social Security benefits to the Facility, it was clear from the evidence presented that several attempts were made by the Facility to collect these benefits from both the Petitioner and their children and that despite these attempts, the Petitioner has refused to assign these benefits to the Facility. Ibid. The Petitioner's family was also aware of the Facility's attempts to have the Petitioner assign their benefits to the Facility. Id. at 3. In fact, in early 2024, the Petitioner's daughter had the Petitioner's Social Security benefits assigned to the Facility, and four monthly payments were made. However, when the Petitioner became aware of this, they refused to authorize any additional payments. Ibid.

On or around May 29, 2024, the Facility informed the Petitioner that they were being discharged from the Facility for failing to assign his Social Security benefits to the Facility and pay the outstanding bill, which at the time totaled \$19,971. (R-6.) The Petitioner refused to make payment after receiving this notice. By letter dated July 30, 2024, the Department of Human Services, Division of Aging Services (DoAS), informed the Petitioner that it had received the Facility's request to involuntarily transfer them "due

to failing, after reasonable and appropriate notice, to reimburse the NF for a stay.” (R-7.)

The notice informs the Petitioner that DoAS has determined that the Facility has taken reasonable and appropriate steps to resolve the issue with them, has identified an available alternative placement acceptable to the Department, and that the Facility has a right to carry out the involuntary transfer. On July 31, 2024, the Facility sent the Petitioner another Notice of Discharge, with a discharge date of August 30, 2024. It notes that the debt incurred at that time exceeded \$22,246, and that, in consultation with their physician, the Petitioner would be discharged to a facility in Clifton. (R-8.)

During the hearing, Carol Silver Elliot, the Facility’s President and CEO, testified regarding the several attempts made by the Facility to resolve this issue. ID at 3. According to Elliot, the Facility attempted to resolve this payment dispute with the Petitioner and their children over the past several months, but the Petitioner refused to make any payment or to assign their Social Security benefits to the Facility. Ibid.

Petitioner testified on their own behalf and stated that they did not receive adequate medical care and was informed by a representative of the Facility that they did not owe the Facility any money. Id. at 4. In the Initial Decision, the Administrative Law Judge (ALJ) stated that the Petitioner did not present any evidence to substantiate their claims of inadequate medical care, and that their testimony regarding a representative of the Facility informing them that they did not owe any money was unconvincing. Ibid.

The ALJ found that the Facility made multiple and appropriate attempts to have the Petitioner assign their Social Security benefits to the Facility, or to pay for services, in accordance with the Admissions Agreement, the Petitioner refused to comply with the Facility’s request to assign their Social Security benefits to the Facility, or to make the requested payments, without any reasonable explanation. Ibid. In addition, the ALJ found that the Social Security benefits owed to the Facility totaled \$29,071 through the

end of October 2024. Ibid. The ALJ also found that the Facility had provided thirty days' notice of the impending involuntary transfer due to occur on August 30, 2024; and that the July 31, 2024, notice, as well as the May 29, 2024 notice, identify the reason for the transfer, specifically, failing to pay for services or have the services paid for by the appropriate benefit program. Ibid. The ALJ concluded that the petitioner should be transferred from the Facility pursuant to 42 C.F.R. § 483.15(c)(1)(i)(E) and N.J.A.C. 8:85-1.10 because they failed, after reasonable and appropriate notice, to assign their Social Security benefits to the Facility, or to reimburse the Facility for their stay. Ibid. The ALJ also concluded that the Facility had complied with appropriate due process requirements to allow for the involuntary transfer of the Petitioner. I agree.

Here, the Facility seeks to discharge the Petitioner for failing to assign their Social Security benefits to the Facility, and for refusing to make all necessary payments towards their stay. The Petitioner, a Medicaid recipient, receives over \$2,000 per month in Social Security benefits and has simply refused to assign those benefits to the Facility. The Facility's Admission Agreement, which the Petitioner signed, makes clear that when a resident is admitted to the Facility under the Medicaid Program, as the Petitioner was, supplemental income, including Social Security, "must be assigned to the Facility at the beginning of each month to be applied toward the Resident's account." Petitioner has unreasonably refused to assign their Social Security benefits to the Facility and, consequently, between May 2023 and October 2024, they have incurred a debt of over \$29,000. Over the past several months, the Facility made multiple attempts to collect these payments from both the Petitioner and their children, and to have the Petitioner assign their Social Security benefits to the Facility. When those efforts failed, the facility appropriately sought and received authority to discharge the Petitioner. By letter dated July 30, 2024, DoAS informed the Petitioner that it had received the Facility's request to

involuntarily transfer them “due to failing, after reasonable and appropriate notice, to reimburse the NF for a stay.” The notice informs the Petitioner that DoAS has determined that the Facility has taken reasonable and appropriate steps to resolve the issue with them, has identified an available alternative placement acceptable to the Department, and that the Facility has a right to carry out the involuntary transfer.

Thus, for the reasons set forth in the Initial Decision and set forth above, I hereby ADOPT the Initial Decision in this matter, ordering that the Petitioner be transferred from the Facility in accordance with the Respondent’s Notice of Facility Initiated Discharge, dated July 31, 2024.

THEREFORE, it is on this 31st day of January 2025,

ORDERED:

That the Initial Decision is hereby ADOPTED.

*Gregory Woods*

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Gregory Woods, Assistant Commissioner  
Division of Medical Assistance and Health Services