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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

August 24, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o New Franklin Center for Rehabilitation
and Nursing
142-27 Franklin Avenue
Flushing, New York 11355

Jason Atlas, Esq.
Schwartz Sladkus Reich Greenberg Atlas
444 Madison Avenue
New York, New York 10022

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: 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

**New Franklin Center for Rehabilitation
and Nursing,**

Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: WebEx Videoconference

Hearing Date: August 22, 2022

Parties: New Franklin Center for Rehabilitation and Nursing
142-27 Franklin Avenue
Flushing, New York 11355
By: Jason B. Atlas, Esq.
Schwartz Sladkus Reich Greenberg Atlas LLP
444 Madison Avenue
New York, New York 10022

██████████
Pro Se

JURISDICTION

New Franklin Center for Rehabilitation and Nursing (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge █ (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

Facility witnesses: Debby Tseng, Social Work Director
Martha Mays, DPT, Director of Rehabilitation Department

Facility exhibits: 1-5

Appellant witnesses: █ █ Appellant

ALJ exhibits: I-II

A digital recording of the hearing was made (1:36:23 in duration).

ISSUES

Has New Franklin Center for Rehabilitation and Nursing established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a █-year-old female who was transferred from █ Hospital to the Facility on █ 2022 for short-term rehabilitation after experiencing COVID-19 related complications. She also has diagnoses of █ (Exhibits 2, 4; Recording @ 29:51, 31:21.)

2. The Appellant generally ambulates with a rollator and independently performs all activities of daily living (ADLs). (Exhibits 4, 5; Recording @ 33:45.)

3. By notice dated [REDACTED] 2022, the Facility determined to discharge the Appellant on [REDACTED] 2022, because her health has improved sufficiently that she no longer requires the services provided by the facility. The notice advised the Appellant that she would be discharged to the [REDACTED] Shelter, located at [REDACTED] (Exhibit 1.)

4. The Appellant's clinical record contains documentation from her interdisciplinary team, including her physician and social worker, that her condition has improved such that she no longer requires the services of a nursing home, and that discharge to the community is appropriate. (Exhibits 4, 5.)

5. On [REDACTED] 2022, the Appellant requested this hearing to contest the Facility's discharge determination.

6. In response to the Appellant's expressed preference for discharge to a [REDACTED] shelter, the Facility amended the discharge notice on [REDACTED] 2022 to advise the Appellant that the discharge would be to a [REDACTED] shelter located at [REDACTED]. (ALJ Exhibit II; Recording @ 36:47, 1:03:19.)

7. The Appellant remains at the Facility pending the outcome of the hearing.

APPLICABLE LAW

A residential health care facility (also referred to in the regulations 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)-(3); 10 NYCRR § 415.2(k).

Department regulations at 10 NYCRR § 415.3(i) describe the transfer and discharge rights of residential health care facility residents. They state, 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:

(a) the resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that:

(2) 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;

When the facility transfers or discharges a resident because the resident's health has improved sufficiently that the resident no longer needs the services provided by the facility, the facility shall ensure that the resident's clinical record contains complete documentation made by the resident's physician and, as appropriate, the resident's interdisciplinary care team. 10 NYCRR § 415.3(i)(1)(ii)(a). The residential health care facility must prove that the discharge was necessary and the discharge plan appropriate. 10 NYCRR § 415.3(i)(2)(iii)(b); State Administrative Procedure Act § 306(1).

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] 2022 for short-term rehabilitation. (Exhibits 2, 4.) She has completed physical and occupational therapy. (Exhibits 4, 5; Recording @ 30:20.) The Appellant independently performs all ADLs and does not receive any services at the Facility that she cannot continue to receive as an outpatient. (Recording @ 30:06.) The Facility has established, and documented in her clinical record, that the Appellant's health has improved sufficiently that she no longer requires the services provided by the facility.

Although the Appellant contends that her physical condition is deteriorating, she does not dispute that she no longer requires the services of a nursing home. She disagreed with the discharge plan proposed in the [REDACTED] 2022 discharge notice because she is unfamiliar with the [REDACTED] and would prefer to be discharged to a shelter located in [REDACTED] (Recording @ 55:54.) The Facility accordingly issued an amended notice on [REDACTED], 2022, which proposes to discharge her to a [REDACTED] shelter in [REDACTED] (ALJ Exhibit II.)

The Facility used its best efforts, including compliance with applicable federal and state regulations, to secure appropriate placement or an appropriate residential arrangement for the Appellant, other than temporary housing assistance. Public Health Law § 2803-z(1)(b). Before resorting to shelter placement for the Appellant, the Facility's social workers attempted to procure placement for the Appellant at an assisted living facility, which she refused. (Exhibit 4; Recording @ 37:45.) Operators of assisted living facilities cannot provide care to individuals who do not voluntarily choose to participate in an assisted living program. 10 NYCRR § 494.4(d)(5).

The Facility also sent referrals to other nursing homes on the Appellant's behalf as she requested. However, the Appellant was not accepted by those other nursing homes, most likely due to her high functional status. (Recording @ 38:21.) Pursuant to 10 NYCRR § 415.3(i)(1)(vii), the Facility was required to permit the Appellant an opportunity to participate in deciding where she will reside after discharge, and it did afford her several opportunities to do so. Even when it became clear that shelter placement was the only available discharge plan for the Appellant, the Facility sought to ensure that she would be discharged to a shelter location that she preferred.

The Facility's proposed discharge plan in the [REDACTED] 2022 discharge notice addresses the Appellant's medical needs and how these needs will be met after discharge. 10 NYCRR § 415.3(i)(1)(vi). In ultimately determining to discharge the Appellant to the [REDACTED] shelter, the Facility has complied with all legal requirements and also acceded to the Appellant's additional requests. The Facility has also acknowledged its ongoing obligation to re-admit the Appellant in the event that the [REDACTED] shelter is unable to accommodate her.
(Recording @ 1:07:52, 1:22:47.)

The Facility has established that its proposed discharge plan to the [REDACTED] shelter is appropriate.

DECISION

New Franklin Center for Rehabilitation and Nursing established that its determination to discharge the Appellant is correct and that its discharge plan, as set forth in its amended discharge notice dated [REDACTED] 2022, is appropriate.

Dated: August 24, 2022
Menands, New York

Natalie J. Bordeaux /ms

Natalie J. Bordeaux
Administrative Law Judge