

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan
SAPA File
BOA by scan



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

June 16, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Williamsbridge Center
1540 Tomlinson Avenue
Bronx, New York 10461

Maya Clarke, DSW
Williamsbridge Center
1540 Tomlinson Avenue
Bronx, New York 10461

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,

Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM: nm
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

Williamsbridge Center for Rehabilitation and Nursing

Respondent,

to discharge Appellant from a residential health care facility.

COPY

DECISION

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

Dates: June 1, 2022

Held at: Webex videoconference

Parties: ██████████ Appellant
c/o Williamsbridge Center for Rehabilitation and Nursing
1540 Tomlinson Avenue
Bronx, New York 10461

Maya Clarke, Director of Social Work
Williamsbridge Center for Rehabilitation and Nursing
1540 Tomlinson Avenue
Bronx, New York 10461

JURISDICTION

Williamsbridge Center for Rehabilitation and Nursing (Facility), a nursing home subject to Article 28 of the Public Health Law, through Notice of Discharge dated ██████████, 2022, determined to transfer ██████████ (Appellant) to ██████████ an assisted living facility. The

Appellant filed an appeal of the discharge to the New York State Department of Health pursuant to 10 NYCRR 415.3(i).

RECORD

ALJ Exhibits: I – Notice of Transfer/Discharge, [REDACTED] 2022
II – Letter with Notice of Hearing

Facility Exhibits: 1 – Social work summary, [REDACTED], 2022
2 – Admission Record
3 – Diagnosis Report, [REDACTED], 2022
4 – Brief Interview for Mental Status, [REDACTED] 2022
5 – Medical Progress Note, [REDACTED] 2022
6 – Rehabilitation Functional Status Report, [REDACTED], 2022
7 – Social work progress notes, [REDACTED], 2022

Appellant Exhibit: None

The Appellant appeared pro se and provided testimony. Maya Clarke, Director of Social Work, represented the Facility and provided testimony. The hearing was digitally recorded. (R. 1:16:09.)

FINDINGS OF FACT

1. Williamsbridge Center for Rehabilitation and Nursing is a nursing home located in Bronx, New York. [Ex I, II, 2.]
2. The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED] 2021 for short-term rehabilitation following a hospitalization due to [REDACTED]. The Facility provided the Appellant with physical, occupational and speech therapies to improve his mobility, gait, swallowing, and ability to perform his activities of daily living. He met his treatment goals and was discharged from therapy services on [REDACTED], 2022. [Ex 5, 6; R. 27:29, 39:24, 42:42.]

3. The Appellant's medical diagnoses include [REDACTED]
[REDACTED]
[REDACTED]. The Appellant can self-administer his medications necessary for his medical conditions. [Ex 3, 5, 6; R. 42:17, 1:11:25.]
4. The Facility's proposed plan is to discharge the Appellant to [REDACTED], an assisted living facility in [REDACTED] that has accepted the Appellant. [Ex I; R. 48:13.]

ISSUE

Has the Facility met its burden of proving that the Appellant's health has improved sufficiently so he no longer needs nursing home care and that its 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. (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; *See also* PHL 2803-z.

2. Upon discharge or transfer, the Facility shall

ensure complete documentation in the resident's clinical record when the facility transfers or discharges a resident under any of the circumstances specified in subparagraph (i) of this paragraph. The documentation shall be made by:

(a) the resident's physician and, as appropriate, interdisciplinary care team when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; 10 NYCRR 41503(i)(1)(ii).

3. 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).

DISCUSSION

The Facility has failed to prove that the discharge is necessary because the Appellant's health has improved sufficiently so he no longer needs skilled nursing care. 10 NYCRR 415.3(i). The Facility has failed to submit documentation by a physician in the Appellant's medical record stating that “discharge is necessary” due to the sufficient improvement of his health so that he no longer requires the services offered by the Facility. 10 NYCRR 415.3(i)(1)(ii)(b) and (iii)(b). The Facility claimed that discharge was necessary because the Appellant successfully met his therapy goals and is independent in his activities of daily living but failed to submit the required documentation. [Ex 4-7; R. 1:04:53, 1:11:25.]

The necessity of this documentation is supported by the professional opinion of Maya Clarke, Director of Social Work, who testified that she has worked with the Appellant since his admission. [R. 27:29.] Ms. Clarke determined that due to the Appellant's medical conditions, he is an appropriate candidate for a supportive environment that can offer independence but also provide oversight for the Appellant's medication management and on-going medical care as needed. [R. 44:33.] The Appellant confirmed this in his testimony when he described the negative

impact on his health, including the risk of [REDACTED] levels and complications with his [REDACTED] [REDACTED] when he stops taking his medication. [R. 1:01:56.]


Another concern is that despite several providers listed in the Appellant's medical record and progress notes from the Facility's nurse practitioner received into evidence, the Appellant was never evaluated by a Facility physician at any point during his stay. [Ex 2, 5; R. 51:44.] The Facility has a regulatory obligation to ensure the documentation in the medical record is complete and that it is the Appellant's physician who documents the reasons for discharge, and it failed to do so. 10 NYCRR 41503(i)(1)(ii).

I find the Facility has not met its burden to establish grounds to discharge the Appellant due to an improvement in the Appellant's health so that he no longer needs the services provided by the Facility. 10 NYCRR 415.3(i)(1)(i)(a)(2). As there are no grounds for discharge established, consideration of the proposed discharge plan is not necessary, including the Appellant's objection that discharge to Mermaid Manor is not suitable due to its location. [R. 1:06:23.]

ORDER

The Facility is not authorized to discharge the Appellant to the location identified in the Notice of Discharge dated [REDACTED] 2022.

Dated: June 16, 2022
Albany, New York


Rayanne L. Babich
Administrative Law Judge

TO:

■■■■ Appellant
c/o Williamsbridge Center for Rehabilitation and Nursing
1540 Tomlinson Avenue
Bronx, New York 10461

Maya Clarke, Director of Social Work
Williamsbridge Center for Rehabilitation and Nursing
1540 Tomlinson Avenue
Bronx, New York 10461