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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

December 7, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Ellicott Center for Rehab and Nursing
200 Seventh Street
Buffalo, New York 14201

Sara Hall, DSW
Ellicott Center for Rehab and Nursing
200 Seventh Street
Buffalo, New York 14201

Bria Lewis, Esq.
Center for Elder Law & Justice
438 Main Street, Suite 1200
Buffalo, New York 14202

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,

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: 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

**Ellicott Center for Rehabilitation
and Nursing,**

Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION

#DA22-5902

Hearing before: John Harris Terepka
Administrative Law Judge

Hearing date: December 6, 2022
By videoconference

Parties: Ellicott Center for Rehabilitation and Nursing
200 Seventh Street
Buffalo, New York 14201
shall@ellicottcenter.net
By: Sara Hall DSW

██████████
Ellicott Center

By: Bria Lewis, Esq.
Center for Elder Law & Justice
438 Main Street, Suite 1200
Buffalo, New York 14202
blewis@elderjusticenyc.org

JURISDICTION

Ellicott Center for Rehabilitation and Nursing (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.

HEARING RECORD

Respondent witnesses: Jessica Knowles, business office manager
Sara Hall, director of social work
Respondent exhibits: 1-6
Appellant witnesses: [REDACTED]
Celina Bryan, WNY Independent Living, Inc.
Appellant exhibits: A
ALJ Exhibit: ALJ Exhibit I (notice of hearing and discharge notice)

The hearing was held and recorded by videoconference. (1h8m; 0h8m.)

SUMMARY OF FACTS

1. Respondent Ellicott Center for Rehabilitation and Nursing is a residential health care facility (RHCF), or nursing home, located in Buffalo, New York. Appellant [REDACTED] age [REDACTED] was admitted to the facility in [REDACTED] 2020 for rehabilitation after hospitalization. Her diagnoses included [REDACTED]. (Exhibit 1.)
2. By notice dated [REDACTED] 2022, the Respondent advised the Appellant that it had determined to discharge her on [REDACTED] 2022, on the grounds that her health has improved sufficiently that she no longer needs the services provided by the facility; and because she has failed, after reasonable and appropriate notice, to pay for her stay. (Exhibit ALJ I.)

3. The Appellant is not in need of nursing home care. She is independent with a walker and in all care needs. She has been discharged from occupational and physical therapy at the nursing home. (Exhibits 3, 4, 5.)

4. The Appellant's treating physician and interdisciplinary care team at the facility have documented in the resident record that she no longer needs the services provided by the facility, that she is clinically stable and has no medical barriers to discharge, that her medical needs can be met on an outpatient basis, and that she can be discharged to a motel. (Exhibit 3, 4, 5.)

5. The Appellant has been responsible for the cost of her nursing home care in the monthly amount of \$████ since █████ 2022. She has refused to pay any of her charges and currently owes the facility \$████. (Exhibit 2.) She has been regularly billed for her charges and they are not in dispute nor is there any pending appeal of a denial of benefits.

6. The discharge notice advised the Appellant she would be discharged to the ██████████, a motel in █████ New York. One week's rent will be paid by the Respondent. The motel is handicap and wheelchair accessible and meal delivery service is available. The discharge plan includes appropriate referrals for medical care and ongoing housing assistance. The Appellant will leave the facility with a supply of her medications, any necessary equipment, and arrangements in place for her continuing medical care. (Exhibit 6.)

7. The Appellant remains at Ellicott Center pending the outcome of this proceeding.

ISSUES

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

APPLICABLE LAW

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 RHCF residents are set forth in Department regulations. A resident may be transferred when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that 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. 10 NYCRR 415.3(i)(1)(i)(a)(2). 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. 10 NYCRR 415.3(i)(1)(i)(b).

The facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility, in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge. The facility must permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility. 10 NYCRR 415.3(i)(1)(vi-vii).

The facility has the burden of proving that the discharge or transfer is necessary and the discharge plan appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

Grounds for discharge. The Appellant's treating physician and care team at the facility have documented in her patient record that she is no longer in need of nursing home care and that her medical conditions can be managed on an outpatient basis. This evidence is uncontroverted. The Appellant has been independent for her care needs since early 2022 and does not dispute the determination that she is not in need of nursing home care. The Respondent has met its burden of establishing valid grounds for discharge pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2).

In addition to not being in need of nursing home care, the Appellant has failed to pay for her stay. Her charges were initially fully covered under Medicaid, but effective [REDACTED] 2022 her local social services district determined she was responsible for a monthly net available monthly income (NAMI) contribution of \$ [REDACTED] attributable to her social security income. She has been repeatedly advised by the Respondent of this obligation but has repeatedly failed and refused to pay. While she claimed to have initially not been aware of her obligation, she admitted she has known of her responsibility for these charges since at least [REDACTED] 2022 and has offered no explanation or good reason for her refusal to pay them. The charges due since [REDACTED] 2022 are not in dispute and there is no appeal of any denial of benefits pending. The Respondent has met its burden of establishing valid grounds for discharge pursuant to 10 NYCRR 415.3(i)(1)(i)(b). Blue v. Zucker, 192 A.D.3d 1693, 145 N.Y.S.3d 732 (2021).

Discharge plan. A nursing home must permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(i)(1)(vii). The Respondent has afforded the Appellant the opportunity

to participate in the development of a discharge plan and has made reasonable attempts to assist and work with her on housing arrangements, without success. She has been independent for her care needs since at least [REDACTED] 2022, and was referred even before then to the [REDACTED] and the [REDACTED] housing resource, which has been attempting to work with her since [REDACTED] 2022 to provide assistance in finding housing. Those agencies now report they are unable to offer any assurance of securing permanent housing for her before [REDACTED] 2023. She is not eligible for an assisted living facility and has not proposed any alternative discharge plan, nor has she asked the Respondent to assist her by exploring any other options.

Under these circumstances, the proposed discharge to a motel with one week's charges paid fulfills the Respondent's obligation to provide a discharge plan that addresses the Appellant's medical needs. The discharge plan includes referrals for ongoing medical care, transportation, necessary equipment, and other logistical assistance in order to effectuate a safe transfer. Efforts by the county and social services agencies to find permanent housing will require her cooperation.

The Appellant is not in need of nursing home care, and while she faces challenges in finding long-term living arrangements, she has received the appropriate referrals for assistance. She is entitled to make other discharge or transfer arrangements, but having failed to participate in the development of a discharge plan of her own, while at the same time continuing to refuse to pay any of her undisputed charges since [REDACTED] 2022, she is not now entitled to remain at Ellicott Center while she does so. Under these circumstances, the Respondent's plan is an appropriate and safe discharge plan and the Respondent is entitled to proceed with it.

DECISION:

Respondent Ellicott Center for Rehabilitation and Nursing has established valid grounds for the discharge of Appellant ██████████ ██████████ and has established that the discharge plan is appropriate.

The Respondent is authorized to discharge the Appellant in accordance with the ██████████, 2022 discharge notice.

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

Dated: Rochester, New York
December 7, 2022



John Harris Terepka
Administrative Law Judge
Bureau of Adjudication