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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

April 11, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Oneida Center for Rehab & Nursing
1445 Kemble Street
Utica, New York 13501

Adam Hovey, Assistant Administrator
Oneida Center for Rehab & Nursing
1445 Kemble Street
Utica, New York 13501

Sarah King, Esq.
Legal Services of Central New York
221 South Warren Street, Suite 300
Syracuse, New York 13202

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

Oneida Center for Rehabilitation and Nursing,

Respondent,

to discharge Appellant from a residential health care facility.

COPY

DECISION

Before: Rayanne L. Babich
Administrative Law Judge

Dates: March 16, 2023
March 31, 2023

Held at: New York State Department of Health
By Webex videoconference

Parties: ██████████, Appellant
c/o Oneida Center for Rehabilitation and Nursing
1445 Kemble Street
Utica, New York 13501
By: Sarah King, Esq.
Legal Services of Central New York

Oneida Center for Rehabilitation and Nursing
1445 Kemble Street
Utica, New York 13501
By: Adam Hovey, Assistant Facility Administrator

JURISDICTION

By notice dated [REDACTED] 2023, Oneida Center for Rehabilitation and Nursing, a residential health care facility (Facility) determined to discharge [REDACTED] (Appellant) from care in its Facility. The Appellant appealed the proposed discharge.

RECORD

- ALJ Exhibits: I – Notice of Hearing, [REDACTED] 2023
II – Notice of Discharge, [REDACTED] 2023
- Facility Exhibits: 1 – Admission Record; Social Work Summary, [REDACTED] 2023
2 – Nurse practitioner progress note, [REDACTED] 2023; Physician progress note, [REDACTED] 2023
3 – Notice of Discharge, [REDACTED] 2023
5 – Social work progress notes, [REDACTED], 2022 – [REDACTED] 2023
6 – Occupational therapy evaluation, [REDACTED] 2022
7 – Physical therapy evaluation, [REDACTED], 2023
8 – “Out on Pass” agreements, [REDACTED], 2022 – [REDACTED], 2023
- Appellant Exhibits: A – Functional Status Report (MDS excerpt), [REDACTED], 2023
B – Representative Payee Application, [REDACTED] 2022
- Facility Witnesses: Hillary Biechy, Director of Rehabilitation
Maty Becirevic, Facility Finance Coordinator
Yvette Odom-Lacy, Director of Nursing
Patricia Tefel, Director of Social Work
- Appellant Witness: [REDACTED] [REDACTED]

The hearing was digitally recorded. Testimony from March 16, 2023 is cited as “R1” and from March 31, 2023 is cited as “R2.”

SUMMARY OF FACTS

1. The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED], 2022 for rehabilitation services after a brief hospitalization due to a fall. [Ex 1; R2 23:09.]

2. The Appellant reached his treatment goals and was discharged from physical therapy and occupational therapy on [REDACTED] 2022. He is independent in all activities of daily living, self-administers his medications, ambulates with a walker or cane as needed, and manages his medical appointments. [Ex 6, 7; R2 22:25.]
3. On [REDACTED] 2023, the Appellant's physician at the Facility, Elizabeth Cooley, M.D., evaluated the Appellant and documented in the medical record that the Appellant has been medically cleared for discharge. [Ex 2.]
4. On [REDACTED] 2023, the Facility issued a Notice of Discharge to the Appellant. The Facility determined the Appellant's health has improved so that he no longer needs the services provided by the Facility. The proposed discharge location is to a local Department of Social Services (DSS) for housing placement at [REDACTED]. [Ex II, 3; R2 53:55.]

ISSUES

Has the Facility met its burden of proving that the Appellant's discharge is necessary 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. 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 proven that the discharge is necessary because the Appellant's health has improved sufficiently so he no longer needs nursing home care and that the plan to discharge the Appellant to a DSS office is appropriate. 10 NYCRR 415.3(i)(1)(i)(2) and (i)(2)(iii)(b).

Grounds for Discharge

The Facility has determined the Appellant no longer requires the services provided by the Facility because he has completed physical and occupational therapy and is independent in his activities of daily living. [Ex 3, 6, 7.] The Appellant argued that he requires nursing staff to manage his complicated health needs.

The evidence showed the Appellant does not require the services provided by the Facility. The Director of Rehabilitation, Hillary Biechy, testified that the Appellant successfully completed rehabilitation services and that his most recent evaluations by occupational and physical therapy on [REDACTED] 2022 and [REDACTED] 2023, respectively, showed him to be independent in performing his activities of daily living. [Ex 6, 7; R2 20:17, 22:25.] She explained that the

Appellant was also assessed to ambulate independently but has a walker and cane to use as needed to ease [REDACTED] pain. [R2 21:22.] Director of Nursing, Yvette Odom-Lacy, testified that the Appellant completes personal care tasks for himself and does not require any assistance from nursing staff. [R2 43:54, 45:21.] She has observed the Appellant's ability to understand and manage his own medications, schedule his medical appointments in the community and arrange his own transportation. [R2 44:10.] The Appellant's attending physician at the Facility, Elizabeth Cooley, M.D., and treating Nurse Practitioner, Brittany Husnay, documented in the Appellant's medical record that he is medically cleared for discharge. [Ex 2.]

The Appellant testified that he has many health complications and that he requires a setting with nursing staff but declined to provide any evidence as to the type of nursing services required or why such services are necessary. [R2 1:05:50.] The Appellant testified that he requires assistance with housekeeping and access to a full-size refrigerator for food and medication storage, but these are not appropriate reasons to continue his admission at the Facility. [R2 1:21:30.] Although the Appellant receives daily [REDACTED] of [REDACTED] to manage his [REDACTED] he also testified that he has self-administered his [REDACTED] independently for the last four to five years. [R2 1:18:31, 1:20:48.] The Facility has established that the determination to discharge the Appellant is necessary.

Discharge Plan

A discharge plan must “[address] the medical needs of the resident and how these will be met after discharge.” 10 NYCRR 415.3(i)(1)(vi). The Facility has proposed a discharge to the local DSS office where the Appellant must present for intake and will be assisted with housing.

[Ex 3; R2 54:56.] The Appellant objected to the discharge location because DSS will likely refer him to a shelter or a hotel where he does not wish to be placed.

Director of Social Work, Patricia Tefel, testified that she began the discharge planning process with the Appellant shortly after his admission because he had previously been living in a hotel. [Ex 5; R2 47:53.] Ms. Tefel stated that she assisted the Appellant with completing housing program applications and referrals to community apartments, but all had long wait lists. [R2 48:04.] She also referred the Appellant to two assisted living facilities and one independent group home, but he refused all of them. [Ex 5; R2 49:28, 51:35.] Ms. Tefel has observed the Appellant leaving the Facility frequently to look at potential apartments, but he has not found any that matched his specifications. [R2 50:27.] DSS was chosen as the discharge location because the Appellant will be assisted with temporary housing placement that will meet his needs while he continues to search for permanent housing. [R2 54:08.] Once discharged, the Appellant will have medications sent to the pharmacy of his choosing and an appointment will be made for a primary care provider in the community. [R2 1:01:22.]

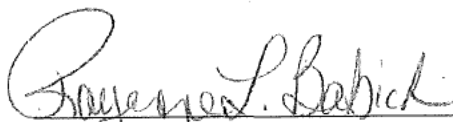
The Appellant objected to the discharge location because DSS will likely offer a shelter or hotel and he does not want to be in either of those places due their frequent "undesirable" population. [R2 1:04:59.] The Appellant testified that he wants an independent room with a full-size refrigerator to accommodate food and his medications. [R2 1:04:02, 1:07:47, 1:16:40.] However, Ms. Tefel testified that shelters can accept residents with refrigerated medication needs and that a hotel should have a refrigerator available if that option is offered. [R2 1:28:11.] The Appellant refused all other available options for discharge, including assisted living facilities and group homes, and declined to provide his reasons. [R2 1:19:05.] The Facility has established that its plan to discharge the Appellant to the DSS office is appropriate.

ORDER

Oneida Center for Rehabilitation and Nursing has met its burden to prove that its determination to discharge the Appellant is necessary, and that the discharge location at the Department of Social Services is appropriate.

1. The Facility is authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED] 2023.
2. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules.

Dated: April 11, 2023
Albany, New York



Rayanne L. Babich
Administrative Law Judge

TO:

██████████ Appellant
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