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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

March 31, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Silver Lake Specialized Care Center
275 Castleton Avenue
Staten Island, New York 10301

Michael Krauss, NHA
Silver Lake Specialized Care Center
275 Castleton Avenue
Staten Island, New York 10301

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 /nj

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

[REDACTED]

Appellant,

from a determination by

SILVER LAKE SPECIALIZED
CARE CENTER,

Respondent,

to discharge him from a residential health
care facility.

COPY

DECISION

Hearing Before:

Matthew C. Hall
Administrative Law Judge

Held at:

Via WebEx

Hearing Date:

March 22, 2023

Parties:

Silver Lake Specialized
Care Center
By: Michael Krauss
Nursing Home Administrator

JURISDICTION

By notice dated [REDACTED] 2023, Silver Lake Specialized Care Center (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) § 415.3(h).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and Discharge Notice
II - CRU Summary Report

Facility Exhibits: None

Facility Witnesses: Michael Krauss - Nursing Home Administrator
Tricia Abbruzzese - Asst. Director of Nursing
Lori Questel - Director of Social Work
Gabrielle Duskin - Social Worker

Appellant Exhibit: None

Appellant Witness: [REDACTED] - Appellant

ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (T.) of witnesses and exhibits (Ex.) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Facility is a Nursing Home located in Staten Island, New York. (ALJ. I.)

2. The Appellant is a [REDACTED]-year-old woman who was originally admitted to the Facility on [REDACTED] 2020. She was originally admitted for short-term rehabilitation following a [REDACTED] wound that has left her bound to a wheelchair. (T. [REDACTED]) She was also diagnosed with a stage [REDACTED] pressure ulcer, [REDACTED] [REDACTED] and [REDACTED] (ALJ. II.)

3. By notice dated [REDACTED] 2023, the Facility determined to discharge the Appellant on [REDACTED] [REDACTED], 2023 because "the Facility cannot meet the resident's needs." Specifically, the

Facility made this determination because the Appellant violated the Facility's no smoking policy. (ALJ. I.)

4. The Facility determined to discharge the Appellant to [REDACTED] in [REDACTED] New York. (ALJ. I.)

5. On two separate occasions during the Appellant's stay at the Facility, the smoke alarm was activated in her bedroom. (ALJ. I.)

6. At no time during her stay at the Facility, was the Appellant observed smoking. (T. Krauss, Abbruzzese, Questel, Duskin.)

7. The Appellant has remained at the Facility pending the outcome of this appeal.

APPLICABLE LAW

A residential health care facility (also referred to in the Department of Health Rules and 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).

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR 415.3[h][1](i)(a)).

The Facility alleges that the Resident's discharge is permissible pursuant to 10 NYCRR § 415(h)(1)(i)(a)(1), which states:

The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation by the facility.

Under the hearing procedures at 10 NYCRR §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under the New York State Administrative Procedures Act (SAPA) § 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 (3rd Dept. 1984), appeal dismissed 63 N.Y.2d 649.

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] [REDACTED] 2020 with diagnoses including a stage [REDACTED] pressure ulcer, [REDACTED] [REDACTED] [REDACTED] and [REDACTED] (ALJ. I.)

The Facility is a non-smoking facility and the Appellant admits to being aware of this policy. (T. [REDACTED] On two separate occasions since the Appellant was admitted to the Facility, she was suspected of smoking either a tobacco cigarette or [REDACTED] On one occasion, the Appellant's smoke alarm was activated and the local fire department was called. The room smelled of smoke, but it could not be determined where the smell originated. The Appellant testified that she had been "[REDACTED]," and social worker Gabrielle Duskin testified that she "[REDACTED] [REDACTED] (T. Duskin, [REDACTED] No tobacco cigarettes or [REDACTED] were found and as the Appellant tends to keep her door closed, no smoke was seen in the room. On another occasion, she was observed from behind by video on an outside patio with a cloud of smoke around her head. Again, she was not seen smoking, and she was sitting near other residents and staff who could have been responsible for the cloud of smoke in the area. The Appellant testified that she "was not smoking," and that other people seated near her were "vaping." (T. [REDACTED]

The Appellant does not want to be transferred from the Facility despite the new recommended facility being located conveniently near her [REDACTED] home, wherein her [REDACTED] lives. The Appellant stated that she has seen the facility before, and feels that she would not be safe there. The Appellant adamantly denies that she has smoked in the Facility at any time and stated that she is not a smoker and has never been one.

The Facility offered scant evidence that the Appellant was in fact, smoking. Any testimonial evidence provided indicated that smoke was seen in the area of the Appellant and that her room smelled of [REDACTED] [REDACTED]. No eyewitness observed the Appellant smoking. Indeed, when asked during her testimony whether or not she had seen the Appellant smoking, Social Worker Gabrielle Duskin simply stated, "No."

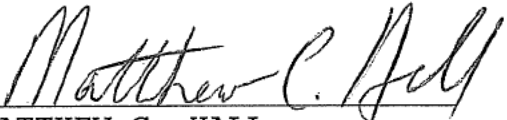
Accordingly, the Facility has not proven that its determination to discharge the Appellant is appropriate.

DECISION

The Facility has not established that its determination to discharge the Appellant was correct, and that transfer to [REDACTED] [REDACTED] is appropriate.

1. The Facility has failed to establish that its determination to discharge the Appellant was necessary.
2. The Facility is not authorized to discharge the Appellant in accordance with the discharge plan.
3. 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: Albany, New York
March 31, 2023


MATTHEW C. HALL
Administrative Law Judge

To: Ms. [REDACTED] [REDACTED]
c/o Silver Lake Specialized Care Center
275 Castleton Avenue
Staten Island, New York 10301

Michael Krauss, Nursing Home Administrator
Silver Lake Specialized Care Center
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