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Department of Health

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

July 6, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Greene Meadows Nursing & Rehabilitation
161 Jefferson Heights
Catskill, New York 12414

Stephanie Tolle, DSW
Greene Meadows Nursing & Rehabilitation
161 Jefferson Heights
Catskill, New York 12414

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: 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

Greene Meadows Nursing and Rehabilitation Center,

Respondent,

to discharge Appellant from a residential health care facility.

COPY

DECISION

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

Dates: June 14, 2023
June 26, 2023

Held at: New York State Department of Health
Webex videoconference

Parties: ██████████, Appellant
c/o Greene Meadows Nursing and Rehabilitation Center
161 Jefferson Heights
Catskill, New York 12414
By: Tom Morris, Ombudsman, Long Term Care,
Community Coalition

Greene Meadows Nursing and Rehabilitation Center
161 Jefferson Heights
Catskill, New York 12414
By: Stephanie Tolle, Director of Social Work

JURISDICTION

By notice dated ██████████, 2023, Greene Meadows Nursing and Rehabilitation Center, a residential health care facility (Facility), determined to discharge ██████████ (Appellant), from care in its Facility. The Appellant appealed the proposed discharge on ██████████ 2023.

RECORD

ALJ Exhibits [Ex]: I – Notice of Hearing, May 3, 2023
II – Notice of Discharge, [REDACTED], 2023

Facility Exhibits: 1 – Facility Letter to Department of Health, [REDACTED] 2023
2 – Medical Record Face Sheet
4 – Leave of Absence forms, [REDACTED] to [REDACTED] 2023
5 – Physical Therapy Discharge Summary,
6 – Nursing Progress Notes, [REDACTED], 2022 to [REDACTED] 2023
7 – Social Services Progress Notes, [REDACTED], 2022 to [REDACTED], 2023
8 – Nurse Practitioner Progress Note, [REDACTED], 2023
9 – Physician Progress Note, [REDACTED] 2023; Physician Progress Note
Amendment, [REDACTED] 2023

Appellant Exhibit: None

Facility Witnesses: Stephanie Tolle, Director of Social Work
Diane Robare, Assistant Director of Nursing
Jim Bienvenue, Director of Rehabilitation

Appellant Witness: [REDACTED]

The hearing was digitally recorded. Citations from June 14, 2023 [1:15:52.] are cited as “R1” and from June 26, 2023 [25:33.] are cited as “R2.”

SUMMARY OF FACTS

1. The Appellant was admitted to the Facility on [REDACTED] 2023 for short-term rehabilitation services following a hospitalization due to [REDACTED]. The Appellant received physical therapy and wound care. He met his rehabilitation treatment goals and was discharged from therapy services on [REDACTED] 2023. The Appellant no longer has open wounds. [Ex 5, 9; R1 45:36.]
2. The Appellant is independent in his activities of daily living and ambulates independently. [Ex 5, 9; R1 47:17.]
3. On [REDACTED] and [REDACTED] 2023, Facility physician, Jonathan Waldman, M.D., documented in the Appellant’s medical record that the Appellant is ready for discharge, independent in

his activities of daily living, ambulates without assistance, has no open wounds, and is not receiving skilled nursing services. Dr. Waldman also wrote that the Appellant can provide self-care and attend to his medical needs while placed at a shelter. [Ex 9.]

4. On [REDACTED] 2023, the Facility issued a Notice of Discharge to the Appellant which stated that his “health has improved sufficiently so the [Appellant] no longer needs the services provided by the facility.” [Ex II.]
5. The Facility has proposed to discharge the Appellant to the [REDACTED] of Social Services (DSS) located at [REDACTED]k. DSS has accepted the Appellant. [Ex II; R1 51:39.]
6. The Appellant remains at the Facility pending the outcome of the hearing.

ISSUES

Has the Facility met its burden of proving that the discharge is necessary and that the 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.

2. Before discharging a resident, the Facility must record the reasons in the resident's clinical record. 10 NYCRR 415.3(i)(1)(iii)(b).
3. If the Facility seeks to discharge a resident because the resident's health has improved sufficiently so that he no longer needs the services provided by the facility pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2), documentation in the clinical record shall be made by the resident's physician, and if appropriate, by the resident's interdisciplinary team. 10 NYCRR 415.3(i)(1)(ii)(a).
4. 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 is seeking to discharge the Appellant because his health has improved so that he no longer requires the services provided by the Facility. [Ex II.] The Facility determined that the Appellant has successfully completed rehabilitation services and is independent in ambulation and activities of daily living. [Ex 9; R1 46:17.] The Appellant objected to the discharge because his health has not been brought to a level where he is ready to leave. [R1 1:05:08.] A second day of hearing was held on June 26, 2023 to allow time for the Facility and the Appellant to submit exhibits. The Facility submitted nursing and social work progress notes. The Appellant did not submit any exhibits.

The Appellant's physician at the Facility, Jonathan Waldman, M.D., has determined that the Appellant is appropriate for discharge. Dr. Waldman examined the Appellant on [REDACTED] 2023 and documented that he is ready for discharge because he is fully ambulatory without assistive devices, and does not require nursing or wound care. [Ex 9.] Dr. Waldman's documentation also explained that the Appellant's routine medical care can be provided in the community with his established medical providers. [Ex 9.] An addendum to the medical record dated [REDACTED], 2023 by Dr. Waldman states that the Appellant is independent in all activities of daily living, including self-administering oral medications and [REDACTED] [Ex 9.]

The Appellant successfully completed physical therapy (PT) and met his treatment goals. Director of Rehabilitation Services, Jim Bienvenue, supervised the physical therapist who provided services to the Appellant. [R1 46:36.] He testified that the Appellant received PT from [REDACTED], 2022 through [REDACTED] 2023, and upon discharge from PT, the Appellant was noted to be independent in his activities of daily living and ambulate independently without assistive devices. [Ex 5; R1 45:36, 46:04.] Mr. Bienvenue also testified that the Appellant's physical therapist performed an evaluation of the Appellant on [REDACTED], 2023 to ensure the Appellant remained independent. [Ex 5; R1 46:48.] The results of the evaluation showed that the Appellant had improved in his overall mobility and functioning since he was discharge from physical therapy and no services were recommended. [Ex 5; R1 47:08.]

Assistant Director of Nursing, Diane Robare, testified that she supervises the unit on which the Appellant is placed and has daily contact with him. [R1 32:20.] Ms. Robare confirmed that the Facility does not provide the Appellant with any nursing or personal care needs. [R1 37:15.] Ms. Robare has also observed that the Appellant appropriately manages his affairs,

arranges frequent trips to leave the Facility for outings, and is capable of administering his own medications. [R1 40:36.]

Although the Appellant testified his health is not at one hundred percent, he failed to provide any evidence that he still requires the services provided by the Facility. [R1 1:02:19.] The Facility has established that the Appellant's health has improved sufficiently so that he no longer needs the services provided by the Facility.

The Facility has proposed to discharge the Appellant to the [REDACTED] [REDACTED] of Social Services (DSS) located at [REDACTED] [Ex II.] Dr. Waldman and Stephanie Tolle, Director of Social Work at the Facility, determined that the Appellant is appropriate for a shelter because he is independent and can meet his own needs. [Ex 9; R1 50:30.] The Appellant objected to the discharge because he wishes to remain at the Facility until he can secure housing, and he believes his belongings will be stolen if placed at a shelter. [R1 1:00:42.]

Ms. Tolle testified that she has worked with the Appellant for discharge planning along with the Appellant's previously assigned social worker, [REDACTED], who is no longer employed by the Facility as of [REDACTED] 2023. [R2 4:34.] Ms. Tolle and Ms. [REDACTED] assisted the Appellant in applying for benefits through Social Security Disability Insurance and [REDACTED], a housing assistance program. [Ex 7; R1 56:40.] Those applications are still pending.

Ms. Tolle testified that the Appellant resided in his own apartment prior to his hospitalization. [R1 57:24.] Due to his current independence and lack of income, he does not qualify for other housing or assistance programs and the shelter is the only remaining option. [Ex 7.] Ms. Tolle also testified that prior to issuing the discharge notice, Ms. [REDACTED] contacted

DSS to confirm that the Appellant will be accepted for temporary housing and was instructed to alert DSS the day before the Appellant plans to present to their office. [Ex 7; R1 51:39.]

The Appellant's desire to remain at the Facility until his Social Security Disability benefits are approved at an uncertain future date is not reasonable. He is independent and able to care for himself. DSS will provide temporary housing and he can follow up with his medical providers in the community for his future medical care needs. [Ex 7, 9; R1 53:12, 56:10.] Although the Appellant may have concern about his belongings, that does not alter the appropriateness of the discharge location.


The Facility has met its burden to prove that the discharge is necessary and that the proposed discharge location is appropriate.

ORDER

Greene Meadows Nursing and Rehabilitation Center met its burden to prove that its determination to discharge the Appellant is necessary, and that discharge to the [REDACTED] of Social Services at [REDACTED] 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: July 5, 2023
Albany, New York


Rayanne L. Babich
Administrative Law Judge

TO:

██████████, Appellant
c/o Greene Meadows Nursing and Rehabilitation Center
161 Jefferson Heights
Catskill, New York 12414

Stephanie Tolle, Director of Social Work
Greene Meadows Nursing and Rehabilitation Center
161 Jefferson Heights
Catskill, New York 12414