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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

June 12, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Long Island Community Hospital
101 Hospital Road
Patchogue, New York 11772

Jacqueline Baranowski-Guido
Hospital Case Manager Director
Long Island Community Hospital
101 Hospital Road
Patchogue, New York 11772

Lauren Braska, Administrator
Medford Multicare Center
3115 Horseblock Road
Medford, New York 11763

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:
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

Medford Multicare Center for Living,

Respondent,

to discharge Appellant from a residential health care facility.

COPY

**DECISION
AFTER
HEARING**

Before: Rayanne L. Babich
Administrative Law Judge

Date: June 2, 2023

Held at: Department of Health
Webex videoconference

Parties: ██████████ ██████████
c/o Medford Multicare Center for Living
3115 Horseblock
Medford, New York 11763

Medford Multicare Center for Living
3115 Horseblock
Medford, New York 11763
By: Lauren Braska, Administrator

Participant: Long Island Community Hospital
101 Hospital Road
Patchogue, New York 11772
By: Jacqueline Baranowski-Guido, Director of Case Management

JURISDICTION

By notice dated [REDACTED] 2023, Medford Multicare Center for Living, a residential health care facility (Facility), determined to discharge [REDACTED] [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: None

Appellant Exhibits: None

Facility Witnesses: Lauren Braska, Facility Administrator
Angela Desposito, Director of Social Work for the Facility

Appellant Witnesses: [REDACTED] [REDACTED]
Jacqueline Baranowski-Guido, Director of Case Management for the hospital
[REDACTED], M.D., Hospital physician

The hearing was digitally recorded. [R. 1:20:08.]

FINDINGS OF FACT

1. The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED] 2023 for short term rehabilitation services following a hospitalization due to a fall. [R. 12:08; 23:08.]
2. The Appellant's current medical diagnoses include [REDACTED]
[REDACTED]. [R. 40:47.]
3. The Appellant requires a two person assist for toileting and transferring. He is dependent on others for all activities of daily living and ambulates with a wheelchair. [R. 14:57.]

4. On [REDACTED] 2023, Angela Desposito, Director of Social Work for the Facility, referred the Appellant to a [REDACTED] counseling program that provides services at the Facility because the Appellant had a history of using [REDACTED] a known [REDACTED]. Counseling services were provided at least once between [REDACTED] and [REDACTED], 2023. [R. 30:45.]
5. On [REDACTED] 2023, the Facility physician ordered [REDACTED] a medication used for the treatment of [REDACTED], to be given to the Appellant. [R. 9:53.]
6. On [REDACTED] 2023, the Appellant was transferred to Long Island Community Hospital by ambulance because the Appellant was reported as unresponsive. He was examined in the emergency room where he was assessed as awake and alert and was admitted to the hospital for an [REDACTED] testing showed the Appellant was negative for [REDACTED] [R. 19:28, 40:34.]
7. On [REDACTED] 2023, the Facility issued a Notice of Discharge to the Appellant's significant other as his emergency contact. The Facility stated in the Notice of Discharge that the discharge is "necessary for the [Appellant's] welfare as the [Appellant's] needs cannot be met in the Facility." The proposed discharge location is Long Island Community Hospital (Hospital). [Ex II.]
8. The Hospital medically cleared the Appellant for discharge back to the nursing home on or about [REDACTED], 2023. The Facility refused to readmit him, and he remains at the Hospital during the pendency of his appeal. [R. 46:04, 53:13.]

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:
 - (1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility.
3. A hospital is not an appropriate discharge location. DOH *DAL NH-19-07: Notice of Transfer or Discharge and Permitting Residents to Return* (August 20, 2019, Redistributed October 11, 2022).
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 has alleged that the Appellant's discharge is necessary because it cannot meet his care needs related to [REDACTED]. The Facility determined that despite its efforts, it could not provide sufficient treatment to accommodate the Appellant after he was transported to a hospital on [REDACTED] 2023 because he was reported as [REDACTED] was

suspected. [R. 10:40.] The Appellant objected to the discharge because he wishes to remain at the Facility while continuing his physical and occupational therapies. [59:06.]

Facility Administrator, Lauren Braska, claimed that the Facility has exhausted all resources available to treat the Appellant's ██████████, as evidenced by his suspected ██████████ during his stay at the Facility and an ██████████ on ██████████ 2023. Ms. Braska testified that, as part of its efforts to treat the Appellant, the Facility physician ordered ██████████ a long-term medication used for ██████████, but it was not effective. [R. 9:53.] However, Ms. Braska confirmed the Appellant only began this medication on ██████████ 2023, one day prior to his admission to the hospital. [R. 19:23.]

The Director of Social Work for the Facility, Angela Desposito, testified that a referral was made on ██████████, 2023 for community substance abuse services to provide the Appellant with counseling at the Facility, but she did not know when the services began or if more than one session was provided. [R. 30:54, 31:47.] Ms. Desposito also testified that the Facility provided psychological services to the Appellant, but she did not know when that service started or how many sessions were provided. [R. 32:00.]

The Appellant testified that he was alert and aware when transported to the Hospital by ambulance. [R. 57:20, 1:00:24.] Hospital physician ██████████, M.D., who examined and treated the Appellant both in the emergency room and throughout his admission to the medical unit, testified on behalf of the Appellant. [R. 40:24.] Dr. ██████████ credibly testified that the Appellant was stable, alert, and responsive, and he did not require any intervention related to ██████████. [R. 42:51.] In addition, the Appellant's laboratory tests showed a negative ██████████. [R. 44:52.] After treatment for ██████████ the Appellant was medically cleared for discharge on ██████████ 2023 to return to the Facility. [R. 46:15.]

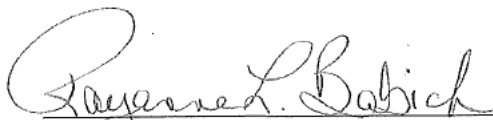
The Facility has failed to prove that the Appellant's needs cannot be met at the Facility after reasonable accommodation. The Facility produced no witnesses, documents, or medical records to support its claim that it could not provide reasonable accommodations to meet the Appellant's needs. The accommodations in the form of treatment services were either not yet implemented or the Facility was unable to prove that the services had been provided or were unsuccessful.

The Facility has also failed to develop a discharge plan that is appropriate for the Appellant. A hospital is not an appropriate discharge location for a resident who still requires nursing home care but not hospitalization. *DOH DAL NH-19-07: Notice of Transfer or Discharge and Permitting Residents to Return* (August 20, 2019, Redistributed October 11, 2022). The Facility has not identified an alternative discharge location for the Appellant. Due to the Facility's failure to establish grounds for discharge and an appropriate discharge location, the Facility is required to readmit the Appellant.

ORDER

1. The Facility is ordered to accept the Appellant to the next available semi-private bed prior to admitting any other person to the Facility, pursuant to 10 NYCRR 415.3(i)(2)(i)(d).
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: June 9, 2023
Albany, New York



Rayanne L. Babich
Administrative Law Judge

TO:

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Patchogue, New York 11772

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