

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan
SAPA File
BOA by scan



Department of Health

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

July 3, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Delhi Rehabilitation and Nursing Center
41861 State Route 10
Delhi, New York 13753

Yakov Appelbaum, Administrator
Delhi Rehabilitation and Nursing Center
41861 State Route 10
Delhi, New York 13753

Raul A. Tabora, Jr. Esq.
Bond Schoeneck and King
22 Corporate Woods Blvd.
Albany, New York 12211

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

COPY

STATE OF NEW YORK : DEPARTMENT OF HEALTH

-----X
 In the Matter of an Appeal, pursuant to :
 10 NYCRR § 415.3, by :
 :
 [REDACTED] :
 [REDACTED] :
 :
 Appellant, :
 from a determination by :
 :
 DELHI REHABILITATION AND :
 NURSING :
 :
 Respondent, :
 :
 to discharge him from a residential health :
 care facility. :
 -----X

DECISION
Docket#6047

Hearing Before: Sean D. O'Brien
Administrative Law Judge

Held via WEB EX Video Conference

Hearing Dates: June 14 & 27, 2023

Parties: Delhi Rehabilitation and Nursing
 41861 State Highway 10
 Delhi, New York 13753
 By: Raul A. Tabora, Jr. Esq.
 Bond, Schoeneck & King
 22 Corporate Woods Blvd.
 Albany, New York 12211-2503

[REDACTED]
Pro Se

JURISDICTION

By notice dated [REDACTED] [REDACTED] 2023, the Delhi Rehabilitation and Nursing Center, (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes, Rules and Regulations (NYCRR) Section 415.3(i).

HEARING RECORD

Facility Exhibits: 1, 4, 5, 6, 7, 8, 10, 11, 14, 16, 18, 19

Facility Witnesses: Denise Matash, Director of Social Service
Felix Oduwa, M.D., Medical Director
[REDACTED] Nurse Practitioner

Appellant Exhibits: A-E

Appellant's Witness: [REDACTED] [REDACTED]

Administrative Law Judge Exhibit I: Notice of Hearing with Discharge Notice

A digital recording of the hearing was made.

ISSUES

Has the Facility established that the determination to transfer/discharge is correct and the discharge plan for the Appellant is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (T.) of witnesses and exhibits (Exhibit) found persuasive in arriving at a particular finding.

1. The Appellant is [REDACTED]-years-old and was admitted to the Facility on [REDACTED], 2021, for short-term rehabilitation. (Exhibit 4, 6, 7; T. Matash.)

2. By notice dated [REDACTED], 2023, the Facility determined to discharge the Appellant because "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility." (Exhibits 1, 6, 7, 11.)

3. The Facility determined to discharge the Appellant to the [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Exhibits 1, 11; T. Matash.)

4. At the time of his admission to the Facility, the Appellant needed assistance in some of his Activities of Daily Living (ADLs) including transferring and bathing. The developed goal was to return the Appellant to the community. (Exhibits 1, 4, 6, 7, 10; T. Matash.)

5. The Appellant has completed his short-term rehabilitation to the point where he no longer needs nursing home care, nor does he need assistance with his ADLs. (Exhibits 1, 4, 6, 7; T. Oduwa, T. [REDACTED])

6. The Appellant can self-direct and can make his own medical appointments. The Appellant can ambulate independently without a device. (Exhibits 1, 4, 6, 7; T. Oduwa, T. [REDACTED] T. Matash.)

7. The Appellant previously lived in an apartment in [REDACTED] New York. However, that apartment is no longer available, and family members are not a housing resource. (Exhibits 1, 4; T. Matash.)

8. It is the professional opinion of the Appellant's caregivers at the Facility, including the Facility's Medical Director, who is the Appellant's treating physician, the Director of Social Work and the Facility's Rehabilitation and

Occupational Therapy sections that discharge to the [REDACTED] [REDACTED] is appropriate. (Exhibits 1, 2, 4, 6, 7; T. Matash, T. Oduwa, T. [REDACTED])

9. The Appellant remains 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 Sections 2801(2)(3); 10 NYCRR Section 415.2(k).

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

The Facility alleges the Appellant's discharge is permissible pursuant to 10 NYCRR Section 415(i)(1)(i)(a)(2), which states in relevant part:

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.

Under the hearing procedures at 10 NYCRR Section §415.3(i)(2)(ii), the Facility bears the burden to prove a discharge necessary and the discharge plan is appropriate.

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] [REDACTED] 2021, for short-term rehabilitation after being treated for [REDACTED] in a local hospital. His diagnoses include [REDACTED], [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. At the time of his admission to the Facility, the Appellant required assistance with some ADLs. (Exhibits 1, 4, 6, 7, 10; T. [REDACTED] By [REDACTED] 2023, the Appellant had made sufficient improvements in all ADL areas and had no need for continued nursing home care. The Certified Nurse Practitioner (CNP) assigned to the Appellant, [REDACTED] [REDACTED] testified the Appellant has hit all the benchmarks for his physical and occupational therapy. CNP [REDACTED] further testified the Appellant ambulates independently. (Exhibits 6, 7; T. [REDACTED])

The Facility's Director of Social Service, Denise Matash, testified that the Appellant is being discharged back to the community to an apartment complex designed for independent

seniors. The Social Service Director also testified the Appellant was uncooperative during the discharge planning process. (Exhibits 1, 4, 16, 18, 19; T. Matash.)

Importantly, Dr. Oduwa, the Appellant's attending physician and the Facility's Medical Director testified the Appellant does not require residential health care placement and can be discharged to the [REDACTED] [REDACTED] [REDACTED] location. (Exhibits 2, 7, 8; T. Oduwa.) The Appellant testified on his own behalf and made it known that he does not want to be discharged because he claims that he cannot live outside a residential health care facility. He did not, however, provide compelling medical evidence to controvert the medical opinion of the Facility's care team or to support his position that he must remain in the Facility.

The Preadmission Screening and Resident Review (PASRR) determination and the telepsychiatry review ([REDACTED] 2022) that the Appellant relies upon were made prior to discharge determination of [REDACTED], 2023, and do not accurately reflect the Appellant's current condition as to his ADLs and medical status. (Exhibits B, C, E, 1, 5, 6, 7, 10, 14; T. [REDACTED] T. Oduwa, T. Matash.) Therefore, the Facility has met its burden of establishing valid grounds that the discharge of the Appellant is

necessary because the Appellant no longer needs the services of a residential health care facility. 10 NYCRR Section 415.3(i)(1)(i)(b).

The discharge plan to the Delhi Senior Community apartments is appropriate. The Appellant does not have any family or friends as a housing resource. Delhi Senior Community is apartment housing for seniors who are independent. (Exhibits 1, 4; T. Matash.)

The Appellant can make medical appointments outside of the Facility and is alert, oriented and can ambulate independently. (Exhibits 4, 6, 7; T. [REDACTED] T. Oduwa, T. Matash.) Also, the Appellant resided independently in the community prior to his admission to the hospital and to the Facility. (Exhibits 1, 4, 5.)

The discharge plan addresses the medical needs and personal care needs of the Appellant post discharge. (Exhibits 1, 4, 8, 11; T. Matash.) 10 NYCRR Section 415.3(i)(1)(vi). At the [REDACTED] Community, the Appellant's scripts and necessary medical referrals will be made prior to his discharge from the Facility. The Facility has set up follow up appointments with mental health professionals on behalf of the Appellant. In addition, it has assisted with obtaining apartment furnishings and a meal program for the Appellant. The health care the Appellant may still need

can be provided on an outpatient basis and he does not require the services of a residential health care facility. (Exhibits 1, 4, 6, 7; T. Oduwa, T. Matash.)

During his time at the Facility a plan was developed for the Appellant to return to the community. He has chosen, however, not to cooperate with Facility staff during the discharge planning process. (Exhibits 1, 18, 19; T. Matash.) His uncooperative and disruptive behaviors over the last several months at the Facility do not change the fact that he no longer needs nursing home care. (Exhibits 1, 4, 6, 7, 9, 10.) The Facility has adequately planned for the Appellant's discharge. The discharge plan it has developed addresses the medical and housing needs of the Appellant post discharge. 10 NYCRR Section 415.3(i)(1)(vi).

However, it is not clear if [REDACTED] will, in fact, accept the Appellant. A discharge plan is appropriate only if it can be implemented. Should [REDACTED] not accept the Appellant, the Facility will not have complied with the discharge plan and is not authorized to discharge the Appellant. The Facility will be obligated to readmit Appellant and develop a new and appropriate discharge plan.

CONCLUSION

Delhi Rehabilitation and Nursing Center has proven that its determination to discharge the Appellant is correct and the discharge plan is appropriate.


DECISION

The appeal by Appellant is therefore DENIED.

The Facility is authorized to discharge the Appellant in accordance with the Facility's [REDACTED] [REDACTED] 2023, Discharge Notice provided that [REDACTED] accepts the Appellant.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

DATED: Albany, New York
July 3, 2023



Sean D. O'Brien
Administrative Law Judge

To:

██████████ ██████████
c/o Delhi Rehabilitation and Nursing Center
41861 State Route 10
Delhi, New York 13753

Yakov Appelbaum, Administrator
Delhi Rehabilitation and Nursing Center
41861 State Route 10
Delhi, New York 13753

Raul A. Tabora, Jr. Esq.
Bond Schoeneck and King
22 Corporate Woods Blvd.
Albany, New York 12211