

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 27, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o The New Jewish Home – Manhattan
120 West 106th Street
New York, New York 10025

Meg Bondy, DSW
The New Jewish Home – Manhattan
120 West 106th Street
New York, New York 10025

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

COPY

In the Matter of an Appeal, pursuant to
10 NYCRR 415.3, by

██████████ ██████████

DECISION

Appellant,

from a determination by

The New Jewish Home-Manhattan

to discharge her from a residential health care facility.

Before: Kimberly A. O'Brien
Administrative Law Judge (ALJ)

Held at: Videoconference via WebEx

Dates: July 25, 2023

Parties: ██████████ ██████████
c/o Meg Bondy, Director of Social Work
The New Jewish Home - Manhattan
120 West 106th Street
New York, New York 10025
By: Pro Se

The New Jewish Home - Manhattan
120 West 106th Street
New York, New York 10025
By: Meg Bondy, Director of Social Work

JURISDICTION

By notice dated [REDACTED] 2023, The New Jewish Home (facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge resident [REDACTED] [REDACTED] (Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) 415.3(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. A digital recording was made of the proceeding.

HEARING RECORD

ALJ Exhibits: 1. Letter with Notice of Hearing & [REDACTED]/23 Transfer/Discharge Notice.

Facility Exhibits: 1. Physician's Letter [REDACTED] 202.

Appellant Exhibits: None.

Facility Witness: Meg Bondy, Director of Social Work; Zofia Tryjanski, Director of Rehabilitation Services.

Appellant Witness: Appellant; [REDACTED] [REDACTED] Appellant's [REDACTED]

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female who was admitted from the hospital to the facility in [REDACTED] 2021 for short-term rehabilitation. (Facility Exhibit [Ex.] 1; Testimony [T.]

2. On [REDACTED] 2023, the facility issued a Transfer/Discharge Notice¹ to the Appellant. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant's health has improved sufficiently such that the Appellant no longer requires the services of the facility. The proposed discharge is to her apartment, [REDACTED], [REDACTED] (home). (ALJ Ex. I, Ex. I, T. Bondy, Tryjanski.)

3. Facility physician Stephanie Le, M.D., documented that the Appellant is "clinically stable" and discharge to her home is appropriate. The Appellant is independent with activities of daily living with the help of "assistive devices." She can ambulate approximately [REDACTED] feet with a rolling walker and uses a wheelchair for longer distances. (Ex. 1 ; T. Tryjanski.)

4. Upon discharge the Appellant will be provided with a 30-day supply of medications and an appointment with a community primary care provider. A rolling walker, wheelchair, hospital bed and commode (equipment) will be ordered. The facility will arrange for the Appellant to have a personal emergency device she can wear on her person to alert 911/ EMS if she needs help. The Appellant has been approved to receive [REDACTED] hours a week of homecare services, which includes assistance with bathing, light housekeeping, shopping and meal preparation. The Appellant has also been approved to receive some short-term nursing services. (Ex. 1 ; T. Bondy, Tryjanski.)

5. The Appellant timely appealed the facility's discharge determination and proposed discharge location (ALJ Ex. 1.)

¹ The facility withdrew non-payment as a basis for discharge. The remaining basis for discharge is that Appellant's health has improved sufficiently so that she no longer needs the services provided by the facility.

6. The Appellant has remained at the Facility during the pendency of the appeal.

ISSUES

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

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. (PHL § 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[i][1].)

The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415(i)(1)(i)(a)(2), which states:

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 415.3(i)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate. Under 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. It is less than a preponderance of evidence but more than mere surmise, conjecture or speculation, and it constitutes a rational basis for a decision. (Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3d Dept. 1984], appeal dismissed 63 N.Y.2d 649.

DISCUSSION

The Appellant was admitted to the facility for short-term rehabilitation/ restorative therapy. Dr. Le documented that discharging the Appellant to her home is appropriate. Dr. Le arrived at this decision along with the care team that has been working with Appellant throughout her stay.

Ms. Tryjanski, Director of Rehabilitation Services, testified that the functional needs of the Appellant were assessed when the discharge plan was developed. The Appellant can ambulate short distances with a rolling walker, and she will use that in her home, and she will use her wheelchair going longer distances out in the community. During Appellant's remaining time at the facility, she will continue to receive therapy to maintain her mobility.

Ms. Bondy, DSW, testified that the Appellant is independent and able to make her needs known and advocate for herself. The Appellant has continually expressed her desire to return to her apartment in the community. Ms. Bondy understands that the Appellant is anxious about going home and offered to assist her and her [REDACTED] with exploring a temporary placement in an assisted living facility to ease her transition back into the community. Ms. Bondy cautioned that it is difficult to find a placement in [REDACTED] that accepts Medicaid and discussed applying to a few facilities in the [REDACTED]. Ms. Bondy testified that the application process takes about a month and agreed to allow the Appellant to remain at the facility until [REDACTED], 2023. Ms. Bondy believes Appellant's discharge home with equipment and services is appropriate.

The Appellant testified that before entering the facility, she had worked for local government for [REDACTED] years and raised her children. She has lived at the facility for almost [REDACTED] years and is anxious about returning to the community because she cannot do all the things she used to do and wants to stay until she can walk better and is stronger. She said that she sometimes [REDACTED] when using her walker and is concerned about her medical condition. The Appellant also said that she can't walk very far and needs to use her wheelchair all the time and her apartment cannot

accommodate her wheelchair. The Appellant testified that she wants to return to her home, but she would consider going to an assisted living facility temporarily.

Mr. [REDACTED] testified that this is a big change for his [REDACTED] and she is very anxious about returning to the community after being in the facility for almost [REDACTED] years. He wants to get her home in order and is exploring the possibility of having modifications made to her apartment or getting her moved to another apartment. Mr. [REDACTED] believes that if his [REDACTED] is given a clearly written discharge plan, she will be less anxious about returning home.

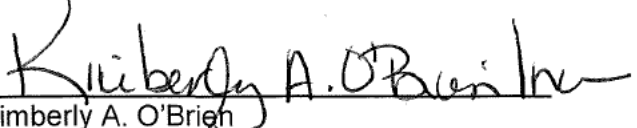
The facility has met its burden to show that the discharge is necessary, and that the evidence supports that the Appellant's health has improved sufficiently such that she no longer needs the services of a skilled nursing facility, her needs can be met in the community, and discharge to her home with equipment and services is an appropriate discharge plan. The Appellant may be discharged on or after [REDACTED] 2023. The Appellant may be discharged before [REDACTED] if she chooses to go home sooner, or she is accepted into an assisted living facility and chooses to go there.

DECISION

The facility has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. The facility is authorized to discharge the Appellant on or after [REDACTED], 2023 in accordance with its [REDACTED], 2023 discharge notice.
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: Menands, New York
July 27, 2023


Kimberly A. O'Brien
Administrative Law Judge