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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

August 7, 2023

CERTIFIED MAIL/RETURN RECEIPT

■■■■ Appellant
c/o Valley View Manor Nursing Home
40 Park Street
Norwich, New York 13815

■■■■ Appellant
Bridgewater Center for Rehabilitation & Nursing, LLC
159-163 Front Street
Binghamton, New York 13905

Bridgewater Center for Rehabilitation & Nursing, LLC
159-163 Front Street
Binghamton, New York 13905

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

Bridgewater Center for Rehabilitation & Nursing, LLC,

Respondent,

to discharge Appellant from a residential health care facility.

COPY

DECISION

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

Date: July 25, 2023

Held at: New York State Department of Health
Webex videoconference

Parties: ██████████ Appellant
c/o Valley View Manor Nursing Home
40 Park Street
Norwich, New York 13815
Pro se

Bridgewater Center for Rehabilitation & Nursing, LLC
159-163 Front Street
Binghamton, New York 13905

JURISDICTION

By notice dated ██████████ 2023, Bridgewater Center for Rehabilitation & Nursing, LLC, 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, July 21, 2023
II – Notice of Discharge [REDACTED], 2023
III – Facility Face Sheet

Facility Exhibit: None

Appellant Exhibit: None

Facility Witness: None

Appellant Witnesses: [REDACTED] [REDACTED]
Frank Murphy, Administrator, Valley View Manor Nursing Home

The hearing was digitally recorded. [R. 35:09.]

SUMMARY OF FACTS

1. The Appellant was admitted to the Facility on [REDACTED], 2021 for short-term rehabilitation services because he was having [REDACTED]. [Ex III; R 16:58.]
2. On or about [REDACTED] 2023, the Appellant was admitted to [REDACTED] Hospital for [REDACTED] from a [REDACTED] [R 14:13.]
3. On [REDACTED] 2023, Facility staff visited the Appellant in the hospital and provided him with a Notice of Discharge. The Notice stated as grounds for discharge that the resident's needs cannot be met after reasonable attempts at accommodation in the Facility and that the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid, or third-party insurance) a stay at the Facility. [Ex II; R. 16:11.]
4. The Notice of Discharge does not identify a discharge location. [Ex II.]
5. Upon clearance from the hospital for discharge from the emergency department, the Facility refused to readmit the Appellant. [R 16:11.]

6. The Appellant was discharged from the hospital to another nursing home, Valley View Manor Nursing home, where he currently resides. [R. 16:22.]
7. The Appellant remains at Valley View Manor Nursing Home pending the outcome of this appeal and wishes to return to the Facility. [R. 30:38.]

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;
 - (b) transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third-party insurance) a stay at the facility.

2. When issuing notice to a resident for discharge, the Facility shall include the location to which the resident will be transferred or discharged. 10 NYCRR 415.3(i)(1)(v)(d).
3. 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 it determined the Appellant’s needs could not be met after reasonable accommodation and for failure to pay for his stay at the Facility. [Ex II.] The Appellant objected to the discharge because he still requires physical therapy, and the Facility is located near his family. [R. 16:26.]

The Appellant appeared and represented himself at the hearing. The Facility failed to appear at the hearing and failed to request an adjournment or present any evidence to refute the Appellant’s discharge appeal despite receiving notice of the hearing. The Facility failed to meet its burden of establishing either of the stated bases for discharge. As such, its determination is reversed.


ORDER

Bridgewater Center for Rehabilitation & Nursing, LLC failed to meet its burden to prove that its determination to discharge the Appellant is necessary, and that its discharge plan is appropriate.

1. The Facility is not authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED] 2023.

2. 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).
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: August 7, 2023
Albany, New York


Rayanne L. Babich
Administrative Law Judge

TO:

■■■■ Appellant
c/o Valley View Manor Nursing Home
40 Park Street
Norwich, New York 13815

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