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Department of Health

KATHY HOCHUL
Governor

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

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

September 25, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o NYC Health + Hospitals/Gouverneur
227 Madison Street
New York, New York 10002

Marne Salomon, DSW
NYC Health + Hospitals/Gouverneur
227 Madison Street
New York, New York 10002

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

[REDACTED]

Appellant,

from a determination by

NYC HEALTH + HOSPITALS/GOUVERNEUR

to discharge her from a residential health care facility.

COPY

DECISION

DA23-6115

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Date: September 13, 2023

Parties: [REDACTED]
NYC Health + Hospitals/Gouverneur
227 Madison Street
New York, New York 10002
By: Pro Se

NYC Health + Hospitals/Gouverneur
227 Madison Street
New York, New York 10002
By: Marne Salomon, Director of Social Work

JURISDICTION

By notice dated [REDACTED] 2023, NYC Health + Hospitals/Gouverneur (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the 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 Exhibit: 1 – Letter with Notice of Hearing and Notice of Discharge or Transfer

- Facility Exhibits: 1 – Admission Record
 2 – BIMS Form
 4 – Summary
 5 – Medical Note
 6 – OT Discharge Summary
 7 – PT Discharge Summary
 8 – Shelter Acceptance

- Appellant Exhibits: None

- Facility Witnesses: Danny Wong, Director of Rehabilitation
 Sherry Humphrey, Medical Director
 Marne Salomon, Director of Social Work

- Appellant Witnesses: None

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2023, with a history of [REDACTED]

[REDACTED]. (Exhibit [Ex.] 1; Testimony [T.] Salomon.)

2. The Appellant received physical therapy (PT) and occupational therapy (OT) at the Facility from [REDACTED] 2023, until being discharged from both therapies on [REDACTED] 2023. The Appellant is independent with all her activities of daily living (ADL). She is independent with her mobility and uses a rolling walker. (Exs. 6, 7; T. Wong, Salomon.)

3. The Appellant's chronic medical conditions and pain are controlled. She takes oral medications, which she is able to manage on her own. (Ex. 5; T. Humphrey.)

4. The Appellant has no skilled nursing needs and all of her medical and functional needs can be safely managed in the community. (T. Wong, Humphrey.)

5. Prior to admission, the Appellant was undomiciled and was living with various friends. (Ex. 4; T. Salomon.)

6. On [REDACTED] 2023, the Facility issued a Notice of Discharge or Transfer to the Appellant which proposed discharge to the [REDACTED] Shelter in [REDACTED] New York. (ALJ Ex. I.)

7. The Notice of Discharge or Transfer 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. (ALJ Ex. I.)

8. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.

9. 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.

A Facility must ensure complete documentation in the resident's clinical record when a resident is discharged. (10 NYCRR 415.3[i][1][ii].)

Facilities are required to provide written notice of transfer or discharge that includes the following:

- (a) The reason for transfer or discharge;
- (b) The specific regulations that support, or the change in Federal or State law that requires, the action;
- (c) The effective date of transfer or discharge;
- (d) The location to which the resident will be transferred or discharged;
- (e) A statement that the resident has the right to appeal the action to the State Department of Health, which includes:

- (1) an explanation of the individual's right to request an evidentiary hearing appealing the decision;
- (2) the method by which an appeal may be obtained;
- (3) in cases of an action based on a change in law; an explanation of the circumstances under which an appeal will be granted;
- (4) an explanation that the resident may remain in the facility (except in cases of imminent danger) pending the appeal decision if the request for an appeal is made within 15 days of the date the resident received the notice of transfer/discharge;
- (5) in cases of residents discharged/transferred due to imminent danger, a statement that the resident may return to the first available bed if he or she prevails at the hearing on appeal; and
- (6) a statement that the resident may represent him or herself or use legal counsel, a relative, a friend, or other spokesman;

(f) the name, address and telephone number of the State long term care ombudsman;

(g) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act;

(h) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(10 NYCRR 415.3[i][1][v].)

Facilities are also required to "provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge."

(10 NYCRR 415.3[i][1][vi].)

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.

DISCUSSION

The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2023. She received PT and OT during her stay. The Appellant's PT and OT was discontinued on [REDACTED] 2023, after reaching independent levels with her ADLs and mobility. Danny Wong, Director of Rehabilitation; Sherry Humphrey, Medical Director; and Marne Salomon, Director of Social Work, each testified that the Appellant is independent in all her ADLs, can independently manage her needs, and does not need skilled nursing. They all also testified that the Appellant is capable of managing her medications and that all her needs can be appropriately met in the community. The Appellant acquiesced that she does not need the services offered by a skilled nursing facility. She contests the appropriateness of the discharge location.

The Appellant has been approved for discharge to the [REDACTED] Shelter. (Ex. 8.) Ms. Salomon testified that prior to identifying the [REDACTED] Shelter as the proposed discharge location, she attempted to locate an assisted living facility but that the Appellant declined to complete the necessary benefit resource documentation needed to place the Appellant in an assisted living facility. Ms. Salomon further testified that upon discharge to the proposed shelter, the Appellant will be provided a rolling walker and any other necessary durable medical equipment, the Appellant will receive a supply of her current medications, and the Appellant will have a referral to a primary care physician to manage her care.

The Appellant testified that she was not able to acquire the necessary proof of income documentation for acceptance to an assisted living facility, but that she was unwilling to consider placement in an assisted living facility anyway. The Appellant disputes the appropriateness of a shelter placement, citing that she is afraid to be with a large crowd of people, that the placement would make the [REDACTED] associated with her [REDACTED], and that it is akin to

a "prison setup." The Appellant instead desires to be placed in the community through a program such as Institute for Community Living (ICL).

Ms. Salomon credibly testified that ICL and other similar programs are not available placements directly from a skilled nursing facility discharge. She elaborated that ICL placements are available only to those already living in the community, and that the Appellant can work toward obtaining an ICL placement after discharge to an assisted living facility or a shelter.


It is uncontested that the Appellant's health has improved sufficiently such that she no longer needs the services of a skilled nursing facility. The Appellant has refused to consider an assisted living facility as a discharge location. The evidence supports that a shelter placement, although not ideal, is an appropriate discharge location in which the Appellant's current needs can be met.

DECISION

NYC Health + Hospitals/Gouverneur has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. NYC Health + Hospitals/Gouverneur is authorized to discharge the Appellant in accordance with its [REDACTED] 2023 Notice of Discharge or Transfer.
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
September 19, 2023


Tina M. Champion
Administrative Law Judge

TO:

[REDACTED]
c/o NYC Health + Hospitals/Gouverneur
227 Madison Street
New York, New York 10002
[REDACTED]

Marne Salomon, Director of Social Work
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