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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

October 20, 2023

CERTIFIED MAIL/RETURN RECEIPT

Danielle Sinclair, Social Worker
Bensonhurst Center
1740 84th Street
Brooklyn, New York 12214

██████████ ██████████
c/o Sheepshead Nursing & Rehabilitation Center
2840 Knapp Street
Brooklyn, New York 11235

Malvina Zukina, DSW
Sheepshead Nursing and Rehab Center
2840 Knapp Street
Brooklyn, New York 11235

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

**Bensonhurst Center for Rehabilitation
and Healthcare,**

Respondent,

to discharge her from a residential
health care facility.

**Decision
After Hearing**

DA23-6173

Hearing before: John Harris Terepka
Administrative Law Judge

Held at: New York State Department of Health
by videoconference
October 19, 2023

Parties: Bensonhurst Center
1740 84th Street
Brooklyn, New York 12214
dsinclair@center84.com
By: Danielle Sinclair, social worker

██████████ ██████████
c/o Sheepshead Nursing & Rehabilitation Center
2840 Knapp Street
Brooklyn, New York 11235
Malvina Zukina, DSW
malvina@snrhc.com

JURISDICTION

Bensonhurst Center (the Respondent), a residential health care facility subject to Article 28 of the Public Health Law, determined to discharge ██████████ ██████████ (the Appellant) from care and treatment in its nursing home. Pursuant to 10 NYCRR 415.3(i), the Appellant appealed the discharge determination to the New York State Department of Health.

SUMMARY OF FACTS

1. Respondent Bensonhurst Center is a residential health care facility (RHCF), specifically a nursing home within the meaning of PHL 2801.2 and 10 NYCRR 415.2(k), located in Brooklyn, New York.
2. Appellant ██████████ ██████████ age ██████████ was admitted to the facility from an acute care hospital on ██████████, 2023 with diagnoses that included ██████████ ██████████. (Exhibit 2, page 4; Exhibit 4, page 1.)
3. By notice dated ██████████ and served on ██████████ 2023, the Respondent advised the Appellant that it had determined to discharge her to her home at ██████████ ██████████ ██████████, because her health has improved sufficiently that she no longer needs the services provided by the facility. (Exhibit 7, pages 8-10.)
4. The Appellant's treating physician documented in a facility progress note dated ██████████, 2023:

... see pt before d/c home on home care 8 hrs a day 6 days a week...
pt stable for d/c home on home care and current meds. (Exhibit 7, page 2.)
5. A discharge summary and post-discharge plan of care, as required by 10 NYCRR 415.3(i)(1)(vi) & 415.11(d), was completed on ██████████ 2023. The summary

included post discharge services for home health care, nursing and therapy, and medical equipment to be in place for the discharge to home. (Exhibit 7, pages 4-7.)

6. On ██████████, 2023 the Respondent altered its discharge notice, changing the date of discharge to ██████████ and changing the discharge location to ██████████ ██████████, which is the address of Signature Assisted Living, an assisted living facility. (Exhibit 7, pages 8-10; 0h40m.) The Respondent made no changes to the ██████████ discharge plan other than to retroactively change the discharge location. (Exhibit 7, pages 4-7.)

7. The transfer to ██████████ was implemented on ██████████ and the Appellant appealed her discharge that same day.

ISSUES

Has the Respondent established that the transfer is necessary and the discharge plan appropriate?

APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, is a residential facility providing nursing care to sick, invalid, infirm, disabled or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital. PHL 2801; 10 NYCRR 415.2(k). Transfer and discharge rights of nursing home residents have been codified in Public Health Law 2803-z and set forth at 10 NYCRR 415.3(i).

A resident may be transferred when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that 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. 10 NYCRR 415.3(i)(1)(i)(a)((2). The resident's clinical record must include complete documentation made by the resident's physician when a transfer or discharge is made for this reason. 10 NYCRR 415.3(i)(1)(ii)(a).

The facility must 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). The facility must also permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(i)(1)(vii). The facility has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

The notice of hearing and ██████████ 2023 discharge notice are in evidence as ALJ Exhibit I. The Respondent presented documents (Exhibits 1-7) and testimony from Lina Freygin, director of social services; Katrina Lati, director of rehabilitation; and Danielle SinClair, social worker. The Appellant appeared and testified. A digital recording of the hearing was made. (1h17m.)

The ██████████ discharge notice served on ██████████ and the plan set forth in the Respondent's ██████████ discharge summary, stated the Appellant would return to her home on ██████████. On ██████████, however, it became apparent that discharge home could not be safely accomplished. The Respondent had known at least since early ██████████ 2023 that the Appellant's home required ██████████ steps to enter, but it

was not until ██████████ that it cancelled the plan after being informed there were also problems with other conditions at the home. (Exhibit 6, pages 3-4.) On ██████████, the Respondent then altered the discharge notice, added a note at the end: "Resident changed her discharge date at the last minute," and transferred the Appellant to ██████████ ██████████. (Exhibit 6, pages 4-5; 0h40m.)

The Respondent's alteration of the discharge location after serving the notice was significant, yet the Respondent did not revise the discharge plan to reflect this change. It simply crossed out and changed the date and location on the discharge summary and plan documenting arrangements for discharge home with services. (Exhibit 7, pages 4-7.) The ██████████ evaluation by the facility physician had stated she was "stable for d/c home" with 8 hours of home care, 6 days per week. (Exhibit 7, page 2.) No physician's review or approval of the change of plan to an assisted living facility was documented.

The Respondent claims that the discharge plan was changed at the request of the Appellant. This was not, however, a voluntary discharge in compliance with a signed and dated written statement requesting the transfer as required by 10 NYCRR 415.3(i). The Appellant consistently told the Respondent, when it began exploring discharge planning with her in ██████████ 2023, that she did not want to be transferred to an assisted living facility. (Exhibit 6, page 3.) At the hearing she also denied requesting such a discharge on ██████████. She said she went along with the transfer on ██████████ only because she believed she had no choice, and because she was assured by the Respondent's administrator that she could return to Bensonhurst if she wanted to. Upon being transferred to ██████████ on ██████████ she immediately exercised her right to request this hearing. She was briefly hospitalized soon after

arriving at Signature, and then discharged by the hospital to another nursing home, ██████████, because the Respondent is not willing to readmit her.

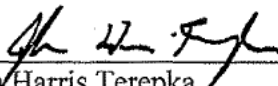
The Respondent has not met its burden of proving that the discharge was necessary and the discharge plan to an assisted living facility was authorized and appropriate. The Appellant maintains that her health care needs justify continued nursing home care. ██████████ the nursing home she was transferred to after her hospitalization, shares her opinion that she currently remains in need of nursing home care. If the Respondent determines to discharge this resident it will be required to reevaluate the Appellant's need for nursing home care, then issue a new discharge notice with an appropriate discharge plan.

DECISION: Respondent Bensonhurst Center has not established grounds for discharge and an appropriate discharge plan for Appellant ██████████

Pursuant to 10 NYCRR 415.3(i)(2)(i)(d), the Respondent is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the facility.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York
October 20, 2023



John Harris Terepka
Administrative Law Judge