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**Department
of Health**

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

August 26, 2020

CERTIFIED MAIL/RETURN RECEIPT

Emily D. Crowley, Esq.
Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534



RE: In the Matter of [REDACTED] – 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,

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
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

Hill Haven Transitional Care Center,

Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION

Hearing Before:

John Harris Terepka
Administrative Law Judge

Held at:

Hill Haven Transitional Care Center
1550 Empire Boulevard
Webster, New York 14580
By videoconference

Hearing Date:

August 20 & 25, 2020

Parties:

Rochester Regional Health
Hill Haven Transitional Care Center
1550 Empire Boulevard
Webster, New York 14580
By: Emily D. Crowley, Esq.
Harris Beach PLLC
99 Garnsey Road
Pittsford, New York 14534

[REDACTED]

Hill Haven Transitional Care Center

By:

[REDACTED]

JURISDICTION

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

SUMMARY OF FACTS

1. Respondent Hill Haven Transitional Care Center is a residential health care facility (RHCF) located in Webster, New York.
2. Appellant [REDACTED], age [REDACTED] was admitted to the facility in [REDACTED] 2018. Her diagnoses include [REDACTED].
3. By notice dated [REDACTED] 2020, the Respondent advised the Appellant that it had determined to discharge her on [REDACTED], 2020, on the grounds that her health has improved sufficiently that she no longer needs the services provided by the facility. (Exhibit ALJ I.)
4. The Appellant is no longer in need of nursing home care. She is independent with most activities of daily living and is able to ambulate with a rolling walker. It is the opinion of her treating physician, Sunil Rajani, MD, that she is no longer in need of nursing home care and that her medical needs can be managed on an outpatient basis. The level of care provided by an assisted living facility (ALF) can meet her other care needs. (Exhibits 1, 2, 4.)
5. The Respondent's discharge plan is to transfer the Appellant to [REDACTED]
[REDACTED] is an assisted living residence

that has evaluated the Appellant, concluded it is able to meet her care needs, and made an offer of placement. (Exhibits 6, 7.)

6. The Appellant remains at Hill Haven pending the outcome of this proceeding.

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 RHCF residents are set forth in Department regulations at 10 NYCRR 415.3(i). This regulation 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:
 - ...
 - (2) 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.
 - ...
 - (ii) ensure complete documentation in the resident's clinical record when the facility transfers or discharges a resident.... The documentation shall be made by:

- (a) the resident's physician and, as appropriate, interdisciplinary care team, when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph.

...

- (vi) 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, and provide a discharge summary pursuant to section 415.11(d) of this Title; and

- (vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.

The Respondent nursing home 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

Respondent's witnesses were ██████████, social worker, and Trinell Elliott, discharge manager. The Appellant was represented by her ██████████. The notice of hearing, with attached copy of the notice of discharge, was entered into evidence as ALJ Exhibit I. Documents from the facility's records were entered into evidence as Exhibits 1-4, 6 and 7. A transcript of the hearing was made.

The Appellant's care team, including her treating physician, have documented that she does not require nursing home care and that an assisted living residence is an appropriate placement for her. She is able to ambulate with a walker, able to complete activities of daily living independently with some cuing, able to feed herself and is self-directing in her daily leisure activities. She requires assistance with medication management, meal preparation and other household and financial management.

An assisted living residence is an adult care facility that provides or arranges for housing, on-site monitoring, and personal care services and/or home care services in a home-like setting. An assisted living residence provides daily food service, on-site monitoring, case management services and the development of an individualized service plan for each resident. PHL Article 46-B, §4651.1. Conditions of eligibility for admission to an assisted living residence include submission of a written report from a physician, physician assistant or nurse practitioner that states the resident is not in need of long term care which would require placement in a residential health care facility and is not otherwise medically or mentally unsuitable for care in the facility. PHL 4657.3.

Because an assisted living residence provides a less restrictive level of care than a nursing home, the proposed transfer is consistent with the Respondent's obligation to "provide each resident with considerate and respectful care designed to promote the resident's independence and dignity in the least restrictive environment commensurate with the resident's preference and physical and mental status." 10 NYCRR 415.4.

The Appellant feels comfortable at Hill Haven, and her [REDACTED] objected to her placement in a shared room at [REDACTED]. The [REDACTED] is also concerned that she has not had an opportunity to tour that facility. [REDACTED] was unable to provide a personal tour of its facility because of restrictions imposed as a result of the ongoing COVID-19 pandemic, but the [REDACTED] was provided with a video tour. Her concerns are understandable but do not entitle the Appellant to remain in nursing home care she does not need. The Appellant and her [REDACTED] offered nothing to controvert the medical opinion of the Appellant's care team, including her physician, that the level of care available at an assisted living residence is appropriate for her.

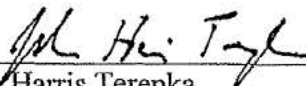
The Respondent began making efforts to engage the Appellant's [REDACTED] in exploring discharge alternatives as far back as [REDACTED] 2020, including contacting other facilities in which the Appellant and her [REDACTED] expressed an interest. (Exhibits 3, 7.) The Respondent's obligation is to provide an appropriate discharge plan that meets the Appellant's needs. The Respondent made reasonable efforts to involve the Appellant and her [REDACTED] in developing such a discharge plan. The Respondent has identified an assisted living residence which can meet the Appellant's care needs, for which she is eligible and which has offered placement. Under these circumstances, the Respondent's discharge plan is appropriate and the Respondent is entitled to proceed with it.

DECISION: Respondent Hill Haven Transitional Care Center has established valid grounds for the discharge of Appellant [REDACTED], and that the discharge plan is appropriate.

The Respondent is authorized to discharge the Appellant to [REDACTED] [REDACTED] in accordance with the discharge notice.

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

Dated: Rochester, New York
August 26, 2020



John Harris Terepka
Administrative Law Judge
Bureau of Adjudication