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**Department
of Health**

KATHY HOCHUL
Governor

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

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

August 26, 2021

CERTIFIED MAIL/RETURN RECEIPT

Philip Buchsbaum, Administrator
Richmond Center for Rehabilitation
and Healthcare
91 Tompkins Avenue
Staten Island, New York 10304

■■■■ ■■■■
c/o Richmond Center for Rehabilitation
and Healthcare
91 Tompkins Avenue
Staten Island, New York 10304

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,

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

██████████

Appellant,

COPY

from a determination by

DECISION

**RICHMOND CENTER for REHABILITATION
and HEALTHCARE**

Respondent,

to discharge him from a residential health care facility.

Hearing Before:

Jean T. Carney
Administrative Law Judge

Held via:

Cisco WebEx videoconference

Hearing Date:

August 9, 2021

Parties:

██████████ Appellant, pro se
████████████████████

Richmond Center, Respondent

By: Philip Buchsbaum, Administrator
pbuchsbaum@richmondrehab.net

JURISDICTION

By notice dated [REDACTED] 2021, Richmond Center for Rehabilitation and Healthcare (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [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).

HEARING RECORD

Facility Exhibits: 1 – Social Work Progress Notes
 2 – Physician Progress Notes
 3 – Nursing Notes
 5 – Physical Therapy Evaluation and Notes
 6 – HCF-DHS Referral

Facility Witnesses: Natasha Mahase-Clennon, Director of Social Work
 Rita Iyoha, Director of Nursing
 Iris Goldstein, Director of Physical Therapy
 Sopha Panicker-Thomas, Nurse Practitioner
 William Putman, Medical Director

Appellant Exhibits: None

Appellant Witness: [REDACTED] [REDACTED] Appellant

The Notice of Hearing was admitted as ALJ I, and the hearing was digitally recorded.

ISSUES

Has the Facility established that the Appellant's discharge is necessary and discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refers to the testimony of the witness ("T") at the hearing and exhibits ("Exhibit") found persuasive in arriving at a particular finding. Any

conflicting evidence was considered and rejected in favor of the cited evidence. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2021, with [REDACTED] of his [REDACTED]. (Exhibits 2, 3 and 5).

2. The Appellant received occupational therapy and physical therapy services from [REDACTED] 2021 – [REDACTED] 2021 when he was discharged because he plateaued for non-weight bearing therapies. On [REDACTED], 2021 the Appellant was reassessed following an [REDACTED] order allowing him to start bearing weight. As of the date of the hearing, the Appellant was walking with the assistance of a rolling walker, and was engaged in physical therapy. (Exhibit 5; T Goldstein and [REDACTED])

3. The Appellant's condition has improved sufficiently such that his treatment team has determined he no longer needs the services provided by the facility. (Exhibits 2, 3, and 5; T Iyoha, Goldstein, Panicker-Thomas, and Putman).

4. The facility worked with the Appellant regarding possible discharge locations. The Appellant's prior living arrangement was no longer suitable for him because his former roommate caused his injuries. The facility contacted the Appellant's [REDACTED] but he was not able to provide housing for the Appellant. The facility also contacted several adult living facilities, but the Appellant did not meet the age criteria. (Exhibit 1; T Mahase-Clennon).

5. The facility submitted a referral to the Department of Homeless Services (DHS) for placement in a shelter, and the Appellate was deemed appropriate for shelter services. The Appellant does not want to go into a shelter because he does not know how he will get around, get medication, and get to appointments. (Exhibit 6; T [REDACTED])

APPLICABLE LAW

A residential health care facility, also referred to as a nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. (Public Health Law §§ 2801[2] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(1)(i)(a), a resident may only be discharged when the interdisciplinary care team determines that:

- (1) the transfer of discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;
- (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;
- (3) the safety of individuals in the facility is endangered; or
- (4) the health of individuals in the facility is endangered.

Additionally, 10 NYCRR § 415(i)(1)(ii) requires that the facility ensures complete documentation in the resident's clinical record when transferring or discharging a resident under the above circumstances. 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; and
- (b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph.

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State

Administrative Procedure Act [SAPA] § 306[1]). Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision. (*Stoker v. Tarantino*, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3rd Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

DISCUSSION

The facility has met its burden of showing that the discharge is necessary, and the discharge plan is appropriate. A discharge plan must “[address] the medical needs of the resident and how these will be met after discharge.” (10 NYCRR § 415.3[i][1][vi]). The evidence establishes that the Appellant’s medical needs, including medication management and physical therapy, can be met in the community, and he no longer needs the services provided in the facility. The Appellant’s treatment team, including the Medical Director, testified credibly that the Appellant can perform all his activities of daily living, has made significant strides in mobility since being allowed to bear weight, and is ready to be discharged from the facility.


Understandably, the Appellant does not want to be discharged to the shelter system. However, the facility only made the referral after all other resources were exhausted. DHS is aware of the Appellant’s mobility issues, and has declared it can safely house him. While a shelter is not the optimum option, it is appropriate here.

ORDER

Richmond Center for Rehabilitation and Healthcare has established that its determination to discharge the Appellant was necessary, and that transfer to DHS is appropriate.

1. Richmond Center for Rehabilitation and Healthcare is authorized to discharge the Appellant on or after [REDACTED] 2021.
2. Prior to discharge, the facility shall ensure that the Appellant shall have at least 3 physical therapy appointments scheduled; and sufficient medication to sustain him until he can find a pharmacy near his new location.
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 26, 2021
Albany, New York


JEAN T. CARNEY
Administrative Law Judge

TO: Philip Buchsbaum, Administrator
Richmond Center for Rehabilitation and Healthcare
91 Tompkins Avenue
Staten Island, New York 10304
pbuchsbaum@richmondrehab.net

[REDACTED]
c/o Richmond Center for Rehabilitation and Healthcare
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[REDACTED]