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**Department
of Health**

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

November 24, 2021

CERTIFIED MAIL/RETURN RECEIPT

██████████ Appellant
c/o The Grand at Barnwell
Rehabilitation and Nursing
3230 Church Street
Valatie, New York 12184

Desiree McKay-Rogers, Director of Social Work
The Grand at Barnwell
Rehabilitation and Nursing
3230 Church Street
Valatie, New York 12184

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,

Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM: cmg
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

In the Matter of an Appeal, pursuant to 10 NYCRR 415.3, by

██████████

Appellant,

DECISION

from a determination by

The Grand at Barnwell Rehabilitation and Nursing

Respondent,

to discharge Appellant from a residential health care facility.

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

Date: November 8, 2021

Held at: Webex videoconference

Parties: ██████████ Appellant
c/o The Grand at Barnwell Rehabilitation and Nursing
3230 Church Street
Valatie, New York 12184

The Grand at Barnwell Rehabilitation and Nursing
3230 Church Street
Valatie, New York 12184

JURISDICTION

By notice dated ██████████ 2021, The Grand at Barnwell Rehabilitation and Nursing (Facility) determined to discharge ██████████ (Appellant) from care in its Facility. 10 NYCRR 415.3(i)(1)(iii)(a). The Appellant appealed the proposed discharge. 10 NYCRR 415.3(i)(2). The

hearing was digitally recorded. The Appellant appeared at the hearing and represented himself. The Facility was represented by Desiree McKay-Rogers, Director of Social Work.

RECORD

ALJ Exhibits: I – Letter with Notice of Hearing
II – Notice of Discharge, [REDACTED], 2021

Facility Exhibits: 1 – Admission Record
2 – Physical Therapy Discharge Summary, [REDACTED] 2021
3 – Social Work progress notes, [REDACTED] 2021
4 – [REDACTED] Rehabilitation and SNF Continued Stay Review Form, [REDACTED] 2021

Appellant Exhibit: A – Medical Records, [REDACTED] [REDACTED] 2021

Facility Witnesses: [REDACTED] Nurse Practitioner
Florabel Tan, Director of Rehabilitation

Appellant Witness: [REDACTED] [REDACTED]

FINDINGS OF FACT

1. The Grand at Barnwell Rehabilitation and Nursing is a residential health care facility. [Ex I, II.]
2. The Appellant was admitted to the Facility on [REDACTED] 2021, for rehabilitation to improve ambulation, transferring, standing balance, gait training, and navigating flat and uneven surfaces. [Ex 1, 2; T. Tan.]
3. The Appellant's medical diagnoses include a [REDACTED]
[REDACTED]. [Ex 3; T. [REDACTED] T. Appellant.]

4. The Appellant received physical therapy from [REDACTED] 2021, through [REDACTED], 2021, and was discharged with a recommendation that the Appellant continue to use a rolling walker or rollator for ambulation. [Ex 1 – 2; T. Tan; T. [REDACTED] T. Appellant.]
5. As grounds for discharge, the Facility cited that the “resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility.” The Facility has charged that the Appellant has reached his physical therapy goal because he is able to ambulate independently with an assistive device (rollator). [Ex II, 2; T. [REDACTED] T. Tan.]
6. The Facility’s discharge plan is a transfer to a shelter, [REDACTED] located at [REDACTED]. [Ex II.]
7. The Appellant opposes the discharge because he continues to require physical therapy services, as ordered by his [REDACTED] medical provider, to improve his ambulation, standing balance and gait. [Ex A; T. Appellant.]

ISSUES

Has the Facility met its burden of proving that the Appellant’s health has improved so that he no longer needs the services provided by the Facility 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:

(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.

2. In preparation for discharge, a facility must develop a plan that "addresses the medical needs of the resident and how these needs will be met after discharge." 10 NYCRR 415.3(i)(1)(vi).
3. Prior to discharge, the "facility shall use its best efforts...to secure appropriate placement or a residential arrangement for the resident, other than temporary housing assistance." Temporary housing assistance may include a "shelter for adults." PHL 2803-z(b).
4. When the discharge or transfer is necessary under 10 NYCRR 415.3(i)(1)(i), the resident's physician must "ensure complete documentation in the resident's clinical record" and "record the reasons in the resident's clinical record." 10 NYCRR 415.3(i)(1)(ii)(b) and (iii)(b).
5. 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 has failed to meet its burden of proof to establish the grounds for discharge and that its discharge plan is appropriate according to 10 NYCRR 415.3(i).

Grounds for Transfer

The Appellant was admitted to the Facility for physical therapy following an [REDACTED] and [REDACTED] repair with the purpose of improving his ambulation, gait, transferring and balance. [Ex 2, 3; T. Tan; T. [REDACTED] T. Appellant.] The Facility is seeking to discharge the Appellant because the Facility has determined that the Appellant has met his treatment goal because he is able to ambulate independently using a rolling walker or rollator. The Appellant argued that he continues to require physical therapy because it has been ordered by his [REDACTED] medical provider and he uses a wheelchair because he cannot use the rolling walker or rollator without experiencing pain.

The Facility's witnesses, [REDACTED] Nurse Practitioner and Florabel Tan, Director of Rehabilitation Services, both testified that the Appellant met his treatment goal and is prepared for discharge from the Facility. [T. [REDACTED] T. Tan.] Ms. Tan further testified that although the Appellant's prior level of functioning included ambulation without assistive devices, rehabilitation staff have determined he is independent because he can ambulate with a rolling walker or rollator. [Ex 2; T. Tan.] In addition, per Ms. Tan the Appellant was observed, against rehabilitation staff recommendation, using a wheelchair only for the purposes of carrying his belongings. To assist the Appellant, rehabilitation staff supplied him with a rollator that contains a basket to hold items. [T. Tan.] For the Appellant's pain associated with his [REDACTED] injury when using the rollator or rolling walker, Ms. [REDACTED] testified that the Appellant has been provided with pain medication. [T. [REDACTED]

However, while the Appellant was discharged from the Facility's physical therapy services on [REDACTED] 2021, medical records from the Appellant's [REDACTED] medical appointment one week prior state that his [REDACTED] provider ordered an additional four to six weeks of physical therapy. [Ex A; T. Appellant.] Despite the Facility's acknowledgement of these records, and Ms. [REDACTED]'s testimony that the Appellant would "have to see his [REDACTED] [REDACTED] and get clearance from that [REDACTED] for each step of the rehab process," the Appellant was discharged from physical therapy without any consultation with the medical provider who ordered these services. [Ex A, 2; T. [REDACTED] T. Tan.] Testimony from the Appellant revealed that his goal is to ambulate without any assistance, but he continues to use the wheelchair due to the pain he experiences when using a rolling walker or rollator. [T. Appellant.] The Appellant's testimony combined with the medical records from the [REDACTED] provider demonstrate that the Appellant may still require the skilled services provided by the Facility.

Notwithstanding the Facility's failure to ensure the proper medical follow up for physical therapy, the Facility has also failed to submit documentation by a physician from the Appellant's medical record stating that "discharge is necessary" due to the sufficient improvement of his health so that he no longer requires services offered by the Facility. 10 NYCRR 415.3(i)(1)(ii)(b) and (iii)(b). The Facility has a regulatory obligation to ensure the documentation in the medical record is complete and that the Appellant's physician documents the reasons for discharge, and it failed to do so.

I find the Facility has not met its burden to establish grounds to discharge the Appellant due to an improvement in the Appellant's health so that he no longer needs the services provided by the Facility. 10 NYCRR 415.3(i)(1)(i)(a)(2).

Discharge Plan

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 discharge plan offered to the Appellant is transfer to a shelter in [REDACTED]. [Ex II.] The Appellant objected to the discharge location because he is unable to ambulate independently, which he defines as walking without an assistive device. [T. Appellant.] The Appellant also objected to the discharge location because he requires further physical therapy services as ordered his [REDACTED] medical provider. [T. Appellant.]

The Facility’s best efforts in securing an appropriate placement are required before discharging a resident to temporary housing, yet the evidence showed the Facility has taken only minimal steps to obtain a suitable discharge location. PHL 2803-z(b). Documentation in the medical record showed that social work staff at the Facility made one referral for housing assistance to the local agency, [REDACTED], but no other assistance or referrals are recorded. [Ex 3.] The Appellant also testified that he contacted another agency to assist with independent housing, but the agency has been unable to reach staff at the Facility to follow through with services. [T. Appellant.]

Besides the Facility’s minimal efforts to find the Appellant temporary housing, the Facility has also failed to present any evidence to demonstrate how the discharge plan to the shelter is appropriate or how it will meet his medical needs. Ms. [REDACTED] testified that the Appellant may continue with outpatient physical therapy services “if he chooses to do so” but provided no plan for how these services will be provided. [T. [REDACTED] Even if the Appellant is determined to ambulate independently while using a rolling walker or rollator, the Facility has failed to demonstrate that he can be accommodated at the shelter. As for medical care, Ms. [REDACTED] testified

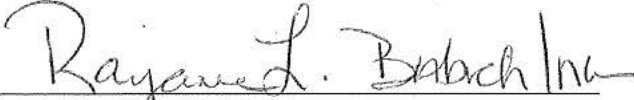
that the Appellant can follow up with social services at the shelter for further assistance, but there are no provisions in place for how the Appellant will access medical care or continue with his current pain medications once discharged. [T. ██████████]

I find the discharge plan to the shelter not appropriate because the Facility has failed to meet its burden to demonstrate how the discharge plan is appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

ORDER

The Facility is not authorized to discharge the Appellant to the location identified in the Notice of Discharge dated ██████████, 2021 or in accordance with its discharge plan.

Dated: November 24, 2021
Albany, New York


Rayanne L. Babich
Administrative Law Judge

TO: ██████████ Appellant
c/o The Grand at Barnwell Rehabilitation and Nursing
3230 Church Street
Valatie, New York 12184

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