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Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Acting Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 21, 2021

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Rutland Nursing Home
585 Schenectady Avenue
Brooklyn, New York 11203

Deborah Headley, LMSW
Rutland Nursing Home
585 Schenectady Avenue
Brooklyn, New York 11203

Eve Green Koopersmith, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021

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

██████████ ██████████

DECISION

Appellant,

from a determination by

RUTLAND NURSING HOME

to discharge him from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Dates: December 16, 2021

Parties: ██████████ ██████████
Rutland Nursing Home
585 Schenectady Avenue
Brooklyn, New York 11203
By: Pro Se

Rutland Nursing Home
585 Schenectady Avenue
Brooklyn, New York 11203
By: Eve Green Koopersmith, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021

JURISDICTION

By notice dated [REDACTED] 2021, Rutland Nursing Home (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] [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 Exhibits: 1 – Letter with Notice of Hearing and Transfer/Discharge Notice

Facility Exhibits: 1 – Resident admission documents
2 – PT notes and discharge summary
3 – Nursing notes
4 – Counseling/social work notes
5 – [REDACTED]/21 letter from Mary Tawfik, M.D.

Appellant Exhibits: None

Facility Witnesses: Samuel Khalil, Director of Rehabilitation
Marra Blank, Director of Nursing
Deborah Headley, Director of Social Work

Appellant Witnesses: Appellant testified on his own behalf

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2020 for rehabilitation following a [REDACTED]. (Exhibit [Ex.] 1)
2. The Appellant also had his [REDACTED] earlier in 2020 and has had [REDACTED]. (Ex. 1; Testimony [T.] Blank, [REDACTED])
3. The Appellant has been diagnosed with [REDACTED] and is a [REDACTED] (Ex. 1; T. Blank, [REDACTED])
4. The Appellant received physical therapy (PT) and occupational therapy (OT) services from the Facility. His last course of PT and OT at the Facility ran from [REDACTED] 2021 to [REDACTED], 2021, at which time he was discharged from both therapies. (Ex. 2; T. Kahlil.)
5. The Appellant is able to transfer, propel himself in his wheelchair, and complete all activities of daily living (ADLs) with modified independence. (Ex. 2; T. Kahlil.)
6. The Appellant frequently navigates through the Facility to access the outdoors and leaves the Facility at times on pass, both without the assistance of other individuals. (Ex. 3; T. Blank, Headley, [REDACTED])
7. The Appellant has no skilled nursing needs. (T. Blank.)
8. The Facility's attending physician has cleared the Appellant to return to the community and has opined that discharge to a shelter is safe for the Appellant even with the Appellant's use of a wheelchair for mobility. (Ex. 5.)
9. On [REDACTED] 2021, the Facility issued a Notice of Transfer/Discharge to the Appellant which proposed discharge to the Department of Social Services, [REDACTED] Shelter System. (ALJ Ex. 1; T. Headley.)

10. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant's health has improved sufficiently, and the Appellant no longer requires the services of the facility. (ALJ Ex. I.)

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

12. 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.

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. Under SAPA § 306(1), a decision in an

administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact. It is less than a preponderance of evidence but more than mere surmise, conjecture or speculation, and it constitutes a rational basis for a decision. (Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3d Dept. 1984], appeal dismissed 63 N.Y.2d 649.)

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED], 2020 for rehabilitation and has received PT and OT from the Facility during his stay. Samuel Khalil, Director of Rehabilitation, testified that the Appellant has achieved modified independence with transfers, mobility through self-propelling his wheelchair, and all of his ADLs. Marra Blank, Director of Nursing, testified that the Appellant has no skilled nursing needs. She testified in detail as to the Appellant's medications and the Appellant's ability to self-manage those medications. Deborah Headley, Director of Social Work, testified that the Appellant has been managing all his needs at the Facility since she began working there in [REDACTED] 2020. All three of the Facility's witnesses credibly testified that the Appellant will be able to function in the community on his own, and this assertion is further supported by a statement from a Facility physician specifically stating that the discharge plan for the Appellant is safe. (Ex. 5.)

Ms. Headley testified that the Appellant previously had an apartment in the community but lost it. She testified that the Appellant was referred to [REDACTED] to assist with locating housing in the community in [REDACTED] 2020 but that there is a lengthy wait time, and no housing has been secured yet. She also testified that the Appellant has been encouraged to make efforts to locate housing on his own but has failed to do so. Ms. Headley testified that the Appellant does not qualify for most adult care facilities and assisted living facilities because of his [REDACTED]

age and the absence of a mental health diagnosis. Ms. Headley testified that within the last couple weeks she made a referral to an assisted living facility in [REDACTED] where the Appellant's age is not an issue, but she has not heard back yet as to whether it will accept the Appellant. She further testified that the Appellant has stated that he wants to stay in [REDACTED] and will not go to the assisted living facility even if he is accepted. She testified that she has exhausted all options other than a shelter placement, and that a shelter is appropriate under the circumstances.

At the outset of the hearing the Appellant stated that he disagrees with the Facility's determination to discharge him and the discharge location. The Appellant testified that he is not ready for discharge and believes that he needs more PT to work on mobility with his [REDACTED]

[REDACTED] The Appellant did not dispute that he functions with modified independence for transfers, mobility, and all ADLs and, in fact, his testimony supports those assertions by the Facility. The Appellant testified that his ability to access the gym at the Facility and to engage in certain PT exercises was limited by the gym being closed for significant periods due to COVID-19. This was confirmed by Mr. Khalil's testimony. However, Mr. Khalil credibly testified as to adaptations allowing the Appellant to receive PT (i.e., PT provided on the unit, use of [REDACTED] bedside for strength training, and access to the gym not being necessary to practice transfers). Regardless, the Appellant has achieved modified independence for transfers and mobility and has been discharged from PT based on his achievement. While the Appellant testified that he was not ready for discharge, he also stated that if he still had his previous [REDACTED] floor apartment in the community or had a [REDACTED] floor apartment in the community then he would be ready to go there. The Appellant confirmed that he will not go to the assisted living facility in [REDACTED] even if he is accepted. He further testified that he does not want to go to a shelter, and he expressed concerns about managing independently as well as potential exposure to COVID-19.

The evidence supports that the Appellant's health has improved sufficiently such that he no longer needs the services of a skilled nursing facility. The Appellant has completed his rehabilitation program at the Facility and his medical needs can be met in the community. The evidence also supports that the Facility's plan to discharge the Appellant to a homeless shelter is the only available appropriate discharge location.

DECISION

Rutland Nursing Home has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Rutland Nursing Home is authorized to discharge the Appellant in accordance with its discharge plan on or after [REDACTED], 2021.
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
December 20, 2021


Tina M. Champion
Administrative Law Judge

TO:

██████████ ██████████
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