

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan
SAPA File
BOA by scan



**Department
of Health**

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

October 4, 2022

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

Stevenson Andre, DSW
Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

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,

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: 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

**ArchCare at Terence Cardinal
Cooke Health Care Center**

Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: WebEx Videoconference

Hearing Date: October 3, 2022

Parties: ArchCare at Terence Cardinal Cooke Health Care Center
1249 Fifth Avenue
New York, New York 10029
By: Stevenson Andre, Director of Social Work

[REDACTED]
Pro Se

JURISDICTION

By notice dated [REDACTED] 2022, ArchCare at Terence Cardinal Cooke Health Care Center (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant) from the facility. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

Facility witnesses: Nadine Sam, Patient Account Supervisor
Stevenson Andre, Social Work Director
Charlene Garcia, Social Work Manager

Facility exhibits: 1-5

Appellant witnesses: [REDACTED] Appellant

ALJ exhibits: I-II

A digital recording of the hearing was made (1:13:48 in duration).

ISSUES

Has ArchCare at Terence Cardinal Cooke Health Care Center established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female who was transferred from [REDACTED] Hospital to the Facility on [REDACTED], 2022 for short-term rehabilitation services relating to a [REDACTED]. (Exhibits 2, 3.)

2. The Appellant's admitting diagnoses were: [REDACTED]
[REDACTED]

[REDACTED] (Exhibit 3.)

3. By notice dated [REDACTED] 2022, the Facility determined to discharge the Appellant on [REDACTED] 2022 because her health has improved sufficiently that she no longer requires the services provided by the facility. The notice proposes to discharge the Appellant to the [REDACTED] [REDACTED] [REDACTED]. (Exhibit 1.)

4. The Appellant's medical conditions are stable, and she is able to perform all activities of daily living (ADLs) independently. (Exhibit 4.)

5. The Appellant's clinical record contains documentation from the Appellant's physician that the Appellant's needs can be met in the community, and that discharge to the shelter is appropriate. (Exhibit 4.)

6. The Appellant remains at ArchCare at Terence Cardinal Cooke Health Care Center pending the outcome of this appeal in a shared room with her [REDACTED] who had a separate discharge appeal hearing on [REDACTED] 2022.

APPLICABLE LAW

A residential health care facility (also referred to in the regulations 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)-(3); 10 NYCRR § 415.2(k).

Department regulations at 10 NYCRR § 415.3(i) describe the transfer and discharge rights of residential health care facility residents. They state, 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.

When the facility transfers or discharges a resident because the resident's health has improved sufficiently that the resident no longer needs the services provided by the facility, the facility shall ensure that the resident's clinical record contains complete documentation made by the resident's physician and, as appropriate, the resident's interdisciplinary care team. 10 NYCRR § 415.3(i)(1)(ii)(a). The residential health care facility must prove that the discharge was necessary and the discharge plan appropriate. 10 NYCRR § 415.3(i)(2)(iii)(b); State Administrative Procedure Act § 306(1).

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED], 2022 for short-term rehabilitation. (Exhibits 2, 3; Recording @ 15:39.) She completed physical therapy and reached her maximum level of potential in [REDACTED] 2022. (Recording @ 17:57.) The Appellant independently performs all ADLs with the use of an assistive device. (Recording @ 26:29.) She does not receive any services at the Facility that she cannot continue to receive as an outpatient. (Recording @ 20:03, 24:59.) She obtains medical treatment from physicians in the community as needed. (Recording @ 1:01:16.)

The Appellant contended that she requires additional physical therapy and explained that she has very limited ability to move. She stated that [REDACTED] of the [REDACTED] [REDACTED] of her body

contains [REDACTED] after a [REDACTED] accident several years ago that [REDACTED] surgeries. (Recording @ 27:48, 29:14.) The Appellant remains stationary as much as possible to avoid pain. (Recording @ 31:12, 59:12.) The Appellant did not describe a need for services uniquely provided by a nursing home, but rather, services that are available in an outpatient setting. The Facility has established, and documented in her clinical record, that the Appellant's health has improved sufficiently that she no longer requires the services provided by the facility.

Regarding discharge planning, the Facility considered several possible discharge locations before resorting to a referral for the Appellant to obtain temporary housing assistance from the [REDACTED] Department of Homeless Services (DHS). Although the Appellant's [REDACTED] received a separate hearing regarding a separate discharge notice issued by the Facility, for purposes of discharge planning, the Facility considered the Appellant and her [REDACTED] needs when attempting to formulate an appropriate discharge plan. The Appellant and her [REDACTED] have no home available to them in the community. They also rejected discharge to at least two assisted living facilities. (Recording @ 21:04.) Their refusal to live in an assisted living facility precludes a discharge to such a setting. 18 NYCRR § 494.4(d)(5).

The Appellant expressed a desire to move to [REDACTED]. However, she stated that she and her [REDACTED] need a few more weeks at the Facility while they make travel arrangements and receive an additional month of Social Security benefits with which to procure luggage and travel fare. (Recording @ 38:43, 42:19, 47:35, 57:01.) The Appellant provided no concrete timeframe or evidence to show that her preference is feasible. (Recording @ 46:07.) While she is encouraged to continue discussing her needs with the Facility's social work staff, DHS also offers services that enable temporary housing assistance recipients to obtain permanent housing.

Prior to the Appellant's discharge to the DHS Adult Family Intake Center, the Facility will complete a shelter referral form that indicates the Appellant's need for temporary housing with first floor access or a building with an elevator in order to accommodate the Appellant's inability to ambulate stairs. 18 NYCRR § 491.9(c)(5). (Recording @ 23:30, 53:40.) In devising the proposed discharge plan, the Facility has accounted for the Appellant's unique needs, both physical and social. The Facility has established that its discharge plan is appropriate.

DECISION

ArchCare at Terence Cardinal Cooke Health Care Center has established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate.

Dated: October 4, 2022
Menands, New York

Natalie J. Bordeaux/cmj
Natalie J. Bordeaux
Administrative Law Judge