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**Department
of Health**

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

February 10, 2022

CERTIFIED MAIL/RETURN RECEIPT

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Cynthia McClaren, Administrator
Granville Center Rehabilitation and Nursing
17 Madison Street
Granville, New York 12832

Mary Keniry, Ombudsman
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1462 Erie Boulevard, 2nd Floor
Schenectady, New York 12305

Mitchell Baroody, Esq.
Southwestern Vermont Medical Center
100 Hospital Drive
Bennington, Vermont 05201

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,

A handwritten signature in black ink that reads "Dawn MacKillop-Soller / cmg". The signature is written in a cursive, slightly slanted style.

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

DXM: cmg
Enclosure

administrative hearing. The facility has the burden of proving that the transfer/discharge is necessary and the discharge plan is appropriate.

On [REDACTED] 2021, Granville Center Rehabilitation and Nursing, Granville New York (Respondent or facility), issued a discharge notice and transferred resident [REDACTED] [REDACTED] (Appellant or resident) to Southwestern Vermont Medical Center, Bennington, Vermont (SVMC or hospital). The hospital requested a hearing on behalf of the Appellant to contest the facility's determination not to readmit him. On November 15, 2021, a hearing was held via videoconference before Kimberly A. O'Brien, Administrative Law Judge (ALJ).

The facility was represented by Steven Weiner, Esq. and presented as witnesses Cynthia McClarren, Administrator, and Margaretha LaPorte, Director of Social Work. The Appellant and the Appellant's [REDACTED] and Power of Attorney/Representative, [REDACTED] [REDACTED] appeared, and Mary Keniry, Ombudsman, Catholic Charities, Schenectady, New York (Ombudsman) was present. The hospital was represented by Mitchell Baroody, Esq., and Dr. Alyn Reeve hospital consulting [REDACTED] and Caitlin Tilley, Patient Care Coordinator/ Discharge Planning, appeared and testified at the hearing. Exhibits were admitted into the record including facility exhibits (Ex.): Ex. A- 10/22/2021 Discharge Notice; Ex. B - Facility Progress Notes; Ex. C - Dr. Koppar, Facility Medical Director, Notes; Ex. D - Dr. Olivette, Facility [REDACTED] Notes; Ex. E - Resident's Medication List; Ex. F- SVMC PASSR Document; Ex. G – SVMC PRI;

¹ There was extensive prehearing discussion. Both the resident and Ms. [REDACTED] made it clear that the resident would like to be in a less restrictive environment than a nursing home and near [REDACTED] [REDACTED] where Ms. [REDACTED] resides. Both the facility and SVMC are aware of their wishes and Ms. [REDACTED] confirmed this on the record [Tr. 56-57, 113-116].

Ex. H - Letter from Facility to NYS Department of Health; Ex. I Facility Transportation Form; and SVMC Ex.1 Dr. Reeve's "[REDACTED] Consultation Regarding Capacity"; Ex. 2 - Dr. Cohen Note. A transcript (Tr.) of the hearing was made, 1-120 pages.

Findings of Fact

1. Respondent operates a 122-bed nursing home located in Granville, New York, which is located near the border of Vermont. The facility has three units, A, B & C. Units A & B "[REDACTED]," and the "C wing houses a combination of [REDACTED] residents." The facility does not have a locked unit [Tr. 21-22; Ex. A].
2. The resident, age [REDACTED] has lived in [REDACTED] his entire life and has "[REDACTED] Medicaid." In or about [REDACTED] 2021 was living at a "community care home" in [REDACTED] where he experienced significant "[REDACTED]" and he was admitted to SVMC [Ex. A, B, F, G; Ex. 1].
3. SVMC issued a Patient Review Instrument (PRI) and conducted a Preadmission Screening and Resident Review (PASRR) indicating that the resident was not displaying any physical aggression or disruptive behaviors and that nursing home level of care was appropriate. [Ex. F, G; Tr.17-18, 23-24, 41]
4. On [REDACTED] 2021, the facility admitted the resident for short-term rehabilitation. At the time of his admission to the facility the resident was "not alert to person, place, time, situation" and he was not ambulatory [Tr. 41; Ex. B].
5. Eventually the resident became independent with ambulation and his activities of daily living (ADLs) [Tr. 41-43, 53-58].

6. In or about [REDACTED] 2021 the resident's incidents of [REDACTED] [REDACTED] escalated. The resident began to speak about his history referring to himself as a "[REDACTED]" and that he went to [REDACTED]. The resident began making "[REDACTED]" and [REDACTED] comments to residents and staff" and his [REDACTED] "escalated to the point of where he has stated he has [REDACTED]" [Tr. 53 -56; Ex. A, B, C, D].

7. On [REDACTED] 2021, the facility issued a discharge notice stating that "The continued safety of individuals in the facility would otherwise be endangered by your continued residency." The facility transferred the resident to SVMC for [REDACTED] [REDACTED] treatment and evaluation [Tr. 53-56, 60-63; Ex. A, C & I].

8. The resident remains in the hospital's "emergency crisis area" (ECA), which is a locked unit, and the resident is not allowed to leave. The ECA has three small "independent rooms," and the patients are "under direct video and personal eye observation" [Tr. 70, 90, 98-99; SVMC Ex.1].

9. Dr. Reeve is a consulting [REDACTED] for the hospital who met with the resident and issued a written report "[REDACTED] Consultation Regarding Capacity" (report). The report states that the resident has a long [REDACTED] history and has received [REDACTED] [REDACTED] services. In the [REDACTED]'s the resident committed [REDACTED] by [REDACTED] resident in a group home setting [Ex 1; Tr.70, 85-86, 98-99].

Issues

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

Applicable Law

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(i). 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). The facility alleges that the transfer was necessary in that the safety of individuals in facility is endangered, 10 NYCRR 415.3(i)(1)(i)(a)(3). The facility bears the burden to prove a discharge is necessary and appropriate, 10 NYCRR 415.3(i)(2)(iii)(b).

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

Ms. McClarren, Administrator (Administrator) testified that the facility cares for the [REDACTED] and most of its residents [REDACTED]. Many of the residents make noises and comments that trigger and upset the resident and there is no

way to separate them [Tr. 39]. The facility has made many attempts at accommodating the resident prior to transferring the resident to the hospital including ordering [REDACTED] services and adjusting his medications. The facility also provided the resident with noise cancelling “earphones” to reduce his stress and exposure to yelling and comments made by [REDACTED] residents that “[REDACTED] him and cause him [REDACTED]. Unfortunately, the earphones only [REDACTED] the resident’s [REDACTED] [Tr. 43]. Specifically, while wearing his earphones, he saw another resident at his dining table with a [REDACTED] and he perceived it as a [REDACTED] and said [REDACTED] [REDACTED] [Tr. 29].

Margaretha LaPorte, Director of Social Work, testified that as the resident became [REDACTED] and more independent, she began exploring with the resident and Ms. [REDACTED] assisted living placements in or near [REDACTED] where Ms. [REDACTED] lives. Eventually the resident reported his history and began [REDACTED] and [REDACTED] residents and staff. “It’s not safe for him to be amongst the residents who could [REDACTED] him especially when we can’t predict what is going to be the--the [REDACTED] for him” [Tr. 56]. By [REDACTED] [REDACTED] the facility had provided the resident “with all the [REDACTED] and [REDACTED] help as we could which was just not enough” [Tr. 60]. The facility “can’t discharge a resident to an in-house or an [REDACTED] unit... it has to go through the hospital” [Tr. 60].

Dr. Reeve the hospital’s consulting [REDACTED] testified about her session with the resident and her detailed written report “[REDACTED] Consultation Regarding Capacity” [See FOF 9]. The resident self-reported that he [REDACTED] and that he spent

█ years in █ █ himself in █ and that he does not like to be confined. The resident also expressed that he does not want to be with people who are "█" [Tr. 92]. The resident expressed "█" toward specific nursing home resident[s] [Tr.82]. The resident does not link consequences to his actions when he is "█" [Tr. 91]. Dr. Reeve confirmed that in her report she stated that when the resident is █ his "primitive response is to █" [Tr. 85-86]. Dr. Reeve also confirmed that the resident does not require nursing home care and he should be in a calm environment where he can be redirected if he is █ [Tr.70, 82, 91].

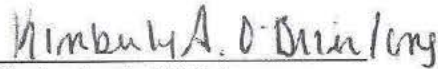
Conclusions

The record establishes that the resident is not █ stable and the health and/or safety of individuals in the facility would be endangered if he returned. The resident's behavior is unpredictable, and he has █ about the consequences of his actions. After many weeks in the hospital the resident continued to express █ toward specific residents at the facility. The hospital continues to hold the resident in a locked unit with constant observation.

Order

The Appellant is not █ stable and the Respondent cannot meet the Appellant's needs. The Appeal is denied.

Dated: Albany, New York
February 10, 2022


Kimberly A. O'Brien
Administrative Law Judge

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