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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

March 23, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o A. Holly Patterson ECF
875 Jerusalem Avenue
Uniondale, New York 11553

Andrea Rauchbauer
A. Holly Patterson ECF
875 Jerusalem Avenue
Uniondale, New York 11553

Kimberly Accardi, Ombudsman
(BY EMAIL)

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

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

[REDACTED]

Appellant,

from a determination by

A. HOLLY PATTERSON EXTENDED
CARE FACILITY

Respondent,

to discharge him from a residential health
care facility.

COPY

DECISION

Hearing Before:

Matthew C. Hall
Administrative Law Judge

Held at:

Via WebEx

Hearing Date:

March 9, 2022

Parties:

A. Holly Patterson Extended
Care Facility
875 Jerusalem Avenue
Uniondale, NY 11553
By: Andrea Rauchbauer

[REDACTED]

By: Kimberly Acardi, Ombudsman

JURISDICTION

By notice dated [REDACTED] [REDACTED] 2021, A. Holly Patterson Extended Care Facility (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, 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).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and attached Facility Discharge Notice

Facility Exhibits: 1 - Notice of Discharge
2 - Letter from Facility to DOH
3 - Medical Director's Progress Report
4 - Psychosocial Assessment
5 - Discharge Plan
6 - Social Work Notes
7 - BIMS Score Summary
8 - Face Sheet

Facility Witnesses: Andrea Rauchbauer - Director of Social Work
Anthony Aiello - Administrator
Javida Rizvon - Medical Director

Appellant's Witness: Kimberly Acardi, Ombudsman
Appellant testified on his own behalf

ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (T.) of witnesses and exhibits (Ex.) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant is a [REDACTED]-year-old man who was admitted to the Facility on [REDACTED] 2020. (Ex 1.)

2. He was originally admitted for sub-acute rehabilitation after being admitted and released from [REDACTED] [REDACTED] [REDACTED] for "[REDACTED]." (Ex. 2.)

3. The Appellant is alert and oriented with a BIMS score of [REDACTED]/15. (Ex 7.)

4. By notice dated [REDACTED] [REDACTED], 2021, the Facility determined to discharge the Appellant on [REDACTED], 2021, because his "health improve(d) sufficiently so that the Resident no longer needs the services of the Facility." (ALJ I, Ex. 1.)

5. As of the date of this hearing, the Appellant no longer required skilled nursing care. He is cognitively intact. Despite his [REDACTED], he declines referral to drug treatment programs. (Ex. 2.) He is completely independent in all Activities of Daily Living (ADLs) such as toileting, bathing, dressing, grooming and hygiene. He is able to ambulate limited distances without a wheelchair. He manages all his medical and personal needs and is medically stable. (Ex. 2.)

6. The Appellant was homeless prior to being admitted to the hospital and his subsequent transfer to the Facility. (T. Rauchbauer.)

7. Pursuant to the [REDACTED] 2021 discharge notice, the Facility determined to discharge the Appellant to the Department of Social Services (DSS), located at [REDACTED], [REDACTED] [REDACTED] [REDACTED]. (Ex. 1.)

8. The Facility has made efforts to find the Appellant a discharge location other than DSS, including Assisted Living Facilities. The majority of these facilities rejected the Appellant's application.

9. [REDACTED] [REDACTED] [REDACTED] showed interest in the Appellant. The Appellant, however, did not want to be discharged

to [REDACTED] because it is located in [REDACTED] County. (T. Rauchbauer.)

10. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Medical Director, and Director of Social Work, that discharge to the community, including to DSS, is appropriate. (Ex. 2,4; T. Rauchbauer, Rizvon.)

11. The Appellant remains at the Facility pending the outcome of this appeal.

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. Public Health Law §§ 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 Resident's discharge is permissible pursuant to 10 NYCRR § 415(i)(1)(i)(a)(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.

Under the hearing procedures at Title 10 NYCRR §415.3(i)(2)(iii), the Facility bears the burden to prove a discharge necessary and appropriate. Under the New York State Administrative Procedures Act (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; 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.

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] 2020, for short term care for deconditioning after being released from [REDACTED]. He was admitted to [REDACTED] for "[REDACTED]." (Ex. 4.)

At the time of his admission to the Facility, the Appellant required assistance with all ADLs, including ambulating, transferring, and showering. By [REDACTED], 2021, however, the Appellant's abilities significantly improved, and he is now independent with all ADLs. He is able to walk limited distances

by himself and is able to ambulate with the use of a wheelchair. He has no further need for rehabilitation. Further, the Appellant has been managing all his medical appointments and other personal matters on his own. (Ex. 2,3.) It is the opinion of the professionals from all Facility disciplines, including Dr. Rizvon, the Facility's Medical Director, that the Appellant may be safely discharged from the Facility to DSS. (Ex. 2,4; T. Rauchbauer, Rizvon.)

The Appellant no longer needs skilled nursing care. Accordingly, the Facility has proven that its determination to discharge the Appellant is correct.

As discussed above, prior to his stay in [REDACTED] and his transfer to the Facility, the Appellant was homeless. The Facility intends to discharge the Appellant to the Department of Social Services. The Appellant would prefer to be discharged to an assisted living facility, but has had difficulty finding a match. Several facilities have rejected the Appellant's applications and in other instances, the Appellant has been uncooperative with the Facility in their attempts to place him. For instance, [REDACTED] [REDACTED] showed interest in admitting the Appellant. The Appellant, however, did not want to be discharged to [REDACTED] because it is located in [REDACTED] County. (T. Rauchbauer.) Also, the Appellant

had the opportunity to be assisted by the [REDACTED] [REDACTED] [REDACTED] is an organization that "helps people get out of nursing homes. He was referred, but did not follow through with the paperwork. [The Facility] offered assistance with the paperwork, but the Appellant refused their help." (T. Rauchbauer.) The [REDACTED] process can take up to three years, so the Appellant has "wasted the last year" not filling out the application. The Appellant denied refusing help, but at the time of this hearing, the [REDACTED] process had not begun. (T. Appellant, Acardi.)

Accordingly, the Facility has proven that its determination to discharge the Appellant to the Department of Social Services is appropriate.

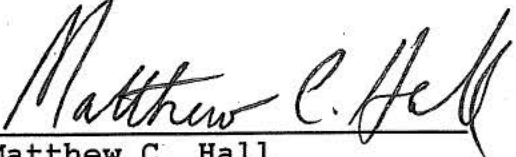
DECISION

The Facility has established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate.

The Facility is authorized to discharge the Appellant in accordance with the [REDACTED] 2021, Discharge Notice.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

DATED: Albany, New York
March 23, 2022


Matthew C. Hall
Administrative Law Judge

To: Mr. [REDACTED]
c/o A. Holly Patterson Extended
Care Facility
87 Jerusalem Avenue
Union, NY 11533

Andrea Rauchbauer, DSW
c/o A. Holly Patterson Extended
Care Facility
87 Jerusalem Avenue
Union, NY 11533

Kimberly Acardia, Ombudsman
(BY EMAIL)