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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 25, 2022

CERTIFIED MAIL/RETURN RECEIPT

Steven Beller, Administrator
Achieve Rehabilitation and Nursing
170 Lake Street
Liberty, New York 12754

██████████ ██████████
c/o Achieve Rehabilitation and Nursing
170 Lake Street
Liberty, New York 12754

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**

██████████

Appellant,

COPY

from a determination by

DECISION

ACHIEVE REHAB and NURSING FACILITY

Respondent,

to discharge him from a residential health care facility.

Hearing Before:

Jean T. Carney
Administrative Law Judge

Held via:

Cisco WebEx videoconference

Hearing Date:

February 24, 2022

Parties:

██████████ tin, Appellant, pro se
████████████████████

Achieve Rehab and Nursing, Respondent

By: Steven Beller, Administrator
sbeller@AchieveRehabNY.com

JURISDICTION

By notice dated [REDACTED] 2021, Achieve Rehab and Nursing Facility (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] [REDACTED] (Appellant) from the Facility to her apartment. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i).

HEARING RECORD

- Facility Exhibits:
- 1 – Nurse Practitioner Progress Note
 - 2 – Therapy Progress Notes
 - 3 – Resident’s Care Plan
 - 4 – Resident’s Minimum Data Set (MDS)
 - 5 – Nurse, Doctor, and Social Work Progress notes
- Facility Witnesses:
- Debra Dowe, Social Worker Assistant
 - Debbie Barish, Social Work Consultant
 - Amanda Froehlich, Unit Manager
 - Steven Beller, Administrator
- Appellant Exhibits:
- A – Written Narrative
 - B- Progress Notes with handwritten edits
- Appellant Witness: [REDACTED] [REDACTED] Appellant

Also present were Tisha Runyan, Director of Nursing; and Eva Swiontkowski-deNardis, Ombudsperson. The Notice of Hearing was admitted as ALJ I, and the hearing was digitally recorded.

ISSUES

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

FINDINGS OF FACT

Citations in parentheses refers to the testimony of the witness ("T") at the hearing and exhibits ("Exhibit") found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejected in favor of the cited evidence. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2021, for short term care after hospitalization after falling and subsequent [REDACTED]. (T [REDACTED] Exhibit 2).

2. The Appellant was discharged from therapy on [REDACTED], 2021, after reaching maximum potential. (Exhibit 2).

3. The Appellant is completely independent in her activities of daily living (ADLs). She ambulates, bathes herself, sets up her meals, cleans her room and changes the linen on her bed herself. (T Froehlich and [REDACTED])

4. The Appellant feels comfortable being discharged and living on her own; but she wants to wait until she obtains a different apartment. (T [REDACTED])

5. The Facility has arranged for the Appellant to receive home health care upon her discharge. The Appellant can administer her medication, and arrange for transportation to doctor appointments. (T Dowe and [REDACTED])

APPLICABLE LAW

A residential health care facility, also referred to 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] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(1)(i)(a), a resident may only be discharged when the interdisciplinary care team determines that:

- (1) the transfer of discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;
- (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;
- (3) the safety of individuals in the facility is endangered; or
- (4) the health of individuals in the facility is endangered.

Additionally, 10 NYCRR § 415(i)(1)(ii) requires that the facility ensures complete documentation in the resident's clinical record when transferring or discharging a resident under the above circumstances. The documentation shall be made by:

- (a) the resident's physician and, as appropriate, interdisciplinary care team, when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; and
- (b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph.

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). 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[1984]).

DISCUSSION

The Facility has met its burden of showing that the discharge is necessary, and the discharge plan is appropriate. 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 evidence establishes that the Appellant’s medical needs can be met in the community, and she no longer needs the services provided in the facility. The Appellant’s testimony corroborated the Facility’s assessment that she is independent in her ADLs, and can be safely discharged to the community. The evidence demonstrates that the Appellant’s health has improved sufficiently so that she no longer needs the services provided by the facility.

The Appellant does not want to go back to her apartment because she would prefer to live in a ■ plus complex. She hopes to find a place soon; and wants to wait until she is able to move into a new place. However, the Appellant is not entitled to remain at the Facility if she does not need skilled nursing services. There is no dispute between the parties that the Appellant is ready and able to be discharged, and her current apartment is appropriate for her needs.

ORDER

Achieve Rehab and Nursing Facility has established that its determination to discharge the Appellant was necessary, and that transfer to her apartment is appropriate.


1. Achieve Rehab and Nursing Facility is authorized to discharge the Appellant pursuant to the discharge plan.

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: February 25, 2022
Albany, New York


JEAN T. CARNEY
Administrative Law Judge

TO: Steven Beller, Administrator
Achieve Rehab and Nursing Facility
170 Lake Street
Liberty, NY 12754
sbeller@AchieveRehabNY.com


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