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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

April 26, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Sprain Brook Manor
77 Jackson Avenue
Scarsdale, New York 10583

Sandra Berkoh, DSW
Sprain Brook Manor
77 Jackson Avenue
Scarsdale, New York 10583

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,

from a determination by

SPRAIN BROOK MANOR REHAB CENTER

to discharge him from a residential health care facility.

COPY

DECISION

DA22-5787

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Dates: March 29, 2022
April 5, 2022

Parties: ██████████ ██████████
c/o Sprain Brook Manor
77 Jackson Avenue
Scarsdale, New York 10583
By: Pro Se

Sprain Brook Manor
77 Jackson Avenue
Scarsdale, New York 10583
By: Sandra Berkoh, Director of Social Work

JURISDICTION

By notice dated [REDACTED], 2022, Sprain Brook Manor (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: I – Letter with Notice of Hearing and Transfer/Discharge Notice
II – Scheduling Letter

Facility Exhibits: 1 – Resident's medical records

Appellant Exhibits: None

Facility Witnesses: Sandra Berkoh, Director of Social Work
Red Ridon, Director of Rehabilitation
Roxanne Quinto, Director of Nursing

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] 2021 for short-term rehabilitation. (Facility Exhibit [Ex.] 1; Testimony [T.] Berkoh.)
2. The Appellant received physical therapy (PT) and occupation therapy (OT) while at the Facility and was discharged from both on [REDACTED] 2021. (Facility Ex. 1; T. Ridon.)
3. The Appellant is independent in his activities of daily living (ADLs). (Facility Ex. 1; T. Ridon.)
4. The Appellant is able to ambulate without an assistive device although he prefers a wheelchair, and he is independent with all transfers. (Facility Ex. 1; T. Ridon.)
5. The Appellant has no skilled nursing needs and all of his medical needs can be safely managed in the community. (T. Quinto.)
6. On [REDACTED] 2022, the Facility issued a Transfer/Discharge Notice to the Appellant which proposed discharge to the Appellant's prior home in the community, located in [REDACTED] New York. (ALJ Ex. I; T. Berkoh.)
7. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant's health has improved sufficiently such that the Appellant no longer requires the services of the facility. (ALJ Ex. I.)
8. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.
9. 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], 2021, for short-term rehabilitation and has received PT and OT from the Facility during his stay. The Appellant was discharged from both therapies on [REDACTED], 2021. Mr. Ridon, the Director of Rehabilitation, testified that the Appellant is independent in all his ADLs. Mr. Ridon also testified that the

Appellant is able to ambulate without an assistive device although he prefers a wheelchair, and that the Appellant is independent with all transfers.

Ms. Quinto, Director of Nursing, testified that the Appellant has no skilled nursing needs. She testified that the Appellant had [REDACTED] that can be safely managed in the community. She testified that the Appellant was receiving wound care but that his wound has healed, and that healing has been confirmed by the Appellant's [REDACTED] surgeon.

Ms. Berkoh, Director of Social Work, testified that the Facility's proposed discharge location is the Appellant's previous residence in [REDACTED] New York. She testified that she has attempted to engage in discussions with the Appellant regarding alternative discharge locations and that the Appellant has indicated he is not interested in alternative locations.

The Appellant testified that he takes no issue with the discharge location but that he is not ready for discharge. He stated that he has medical issues that need addressing prior to leaving the Facility, namely, [REDACTED] from his [REDACTED]

Ms. Quinto, in response to the issues raised by the Appellant, credibly testified that those issues can be addressed safely in the community. She testified that she had not previously heard a complaint by the Appellant of [REDACTED], but that issue could be addressed through his physician in the community. She testified that the Appellant had an in-house consult from [REDACTED] on [REDACTED] 2022, regarding the [REDACTED] from his [REDACTED] that the Appellant had received [REDACTED], and that if the problem persists the Appellant can follow-up with the [REDACTED] at his office in the community. Ms. Quinto also testified that the Appellant had an x-ray of his [REDACTED] in 2021 which showed no fractures, that he had an [REDACTED] follow up appointment in [REDACTED] 2022, that the plan of care was to use ice and Advil as necessary, and that the Appellant has no restrictions on the use of his [REDACTED]. Ms. Quinto testified that this issue can also be addressed in the community as needed.

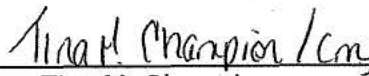
The evidence supports that the Appellant's health has improved sufficiently such that he no longer needs the services of a skilled nursing facility. The Appellant has completed his rehabilitation program at the Facility and his medical needs can be met in the community. It is undisputed that the discharge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

DECISION

Sprain Brook Manor has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Spain Brook Manor is authorized to discharge the Appellant in accordance with its discharge plan on or after [REDACTED], 2022.
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
April 26, 2022



Tina M. Champion
Administrative Law Judge

TO:

██████████
c/o Sprain Brook Manor
77 Jackson Avenue
Scarsdale, New York 10583

Sandra Berkoh
Director of Social Work
Sprain Brook Manor
77 Jackson Avenue
Scarsdale, New York 10583