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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

May 3, 2022

CERTIFIED MAIL/RETURN RECEIPT



Melinda Sheppard, SW
Northwoods Rehabilitation
and Nursing Center
7 Keeler Avenue
Moravia, New York 13118

RE: In the Matter of [REDACTED] [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,

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 :
: **Northwoods Rehabilitation & Nursing Center,** :
: Respondent, :
: to discharge her from a residential health care facility. :
:

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DECISION

Hearing Before: Ann Gayle
Administrative Law Judge

Held: Via Cisco Webex

Hearing Date: April 20, 2022
Record closed April 27, 2022

Parties: Northwoods Rehabilitation & Nursing Center
By: Melinda Sheppard, Social Work Director

By: 

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as Northwoods Rehabilitation & Nursing Center (“Northwoods,” “Respondent” or “Facility”) is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(i). Respondent determined to discharge [REDACTED] [REDACTED] (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(i)(1)(i)(a)(1):

- (1) With regard to 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:
 - (1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility.

Appellant appealed the discharge determination to the New York State Department of Health (“Department”) and a hearing on that appeal was held. Pursuant to §415.3(i)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

A recording of the hearing was made part of the record. Appellant’s [REDACTED] [REDACTED] represented Appellant at the hearing and on conference calls. Ms. [REDACTED] waived Appellant’s presence for the conference calls and hearing, and she testified on behalf of

Appellant. Social Work Director Melinda Sheppard and Director of Nursing Kimberly Stramba testified for Respondent.

The following documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ, Facility, and Appellant Exhibits:

ALJ:

I: Notice of Hearing with attached Notice of Discharge/Transfer

Facility:

1: Progress notes and Wandering/Elopement Risk Assessment

Appellant:

A: Listing of Long Term Care Facilities surrounding Oswego County

ISSUE

Has Northwoods Rehabilitation & Nursing Center established that the discharge is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (“T”) and exhibits (“Ex”) found persuasive.

1. Respondent, Northwoods Rehabilitation & Nursing Center, is a residential health care facility located in Moravia, New York. (Ex A)
2. Appellant, █ age █ was admitted to the Facility on █, 2021, with a primary diagnosis of █ She also has █ (Ex 1; T Stramba)
3. It is the professional opinion of Appellant’s caregivers at the Facility that discharge to █ is appropriate for Appellant. By notice dated █ 2022, Respondent advised Appellant that it had determined to discharge her to █ on the grounds that the facility cannot meet her needs. (Ex I; T Stramba, Sheppard)
4. Appellant has remained at the Facility pending the outcome of this proceeding.

DISCUSSION

Respondent's evidence to prove its stated grounds for discharge that it "cannot meet the needs of the resident" due to the Resident's actual wanderings inside the building and her potential to wander outside the building consisted of: social work and physician notes; a Wandering/Risk Elopement Assessment; and the testimony of Ms. Stramba and Ms. Sheppard.

Ms. Stramba testified that Northwoods is a 40-bed long-term and short-term care facility located in a very rural area. There is one dining room/community activity area, one nursing station, and there is no separation among different types of residents in this small facility. Northwoods, other than locked fire doors, is not a locked facility, and residents can socialize on the outdoor, unlocked patio. There are no outdoor cameras. Per fire safety regulations, the fire doors can be opened if held for ten seconds. Respondent is concerned Appellant can potentially leave via a fire door, but Appellant's [REDACTED] does not believe she can or will.

Ms. [REDACTED] testified that Appellant (when she was living with her) was [REDACTED] and [REDACTED], but after working very hard and for a long time, she accomplished getting Appellant to [REDACTED]. Ms. [REDACTED] asked if Respondent could prevent Appellant from [REDACTED] and wandering at [REDACTED] (when there is less staff) by not allowing Appellant to enter her room to [REDACTED]. Ms. Stramba testified that Northwoods is a restraint-free facility, and it cannot restrain Appellant in any way including forcing her to stay in or out of her room to address her [REDACTED] or for any other reasons.

Ms. Stramba testified that in accordance with Department requirements, there is one RN (registered nurse) on duty eight hours per day and two LPNs (licensed practical nurses) for a 24-hour period. There are three CNAs (Certified Nurse Assistants) from 6 am to 2 pm, two CNAs

██████████ Northwoods

from 2 pm to 10 pm, and one CNA from 10 pm to 6 am. As such, this small Facility cannot provide one-on-one care to its residents, including Appellant.

Respondent demonstrated that Appellant wanders throughout the Facility during all shifts and due to her ██████████ cannot be redirected. Appellant is an elopement risk and she wanders into other residents' rooms which upsets those residents. Appellant is not aggressive but some of the residents into whose rooms she wanders can be aggressive toward her.

Respondent seeks to transfer Appellant to ██████████ which provides a similar level of care as Northwoods, but most importantly has a ██████████ unit. Ms. ██████████ does not want Appellant to be transferred to ██████████ which is farther from Appellant's family who live in closer proximity to Northwoods and other facilities than to ██████████ Ms. ██████████ currently lives in ██████████ but might return to New York. Ms. ██████████ believes Appellant will wander no matter where she resides, and is concerned that moving Appellant from one facility to another will have an adverse effect on Appellant due to her ██████████ which inherently requires stability and consistency.

Although Appellant's ██████████ is opposed to transfer from Northwoods, she indicated that if her appeal is denied, she would like to arrange a transfer date when she could travel to New York to accompany Appellant to a different facility. Additionally, Ms. ██████████ needs some time to file a Petition of Placement with a ██████████ court in order to move Appellant from one facility to another whether for a voluntary or involuntary transfer because Appellant is subject to Guardianship Orders in ██████████ Ms. ██████████ also wanted Respondent to explore facilities which might be more suited to the family's ability to visit Appellant. Ms. Sheppard and Ms. Stramba agreed to contact the facilities (in Appellant's Exhibit A) in ██████████, ██████████ Counties.

██████████ Northwoods

Conference calls were held on April 22 and 27, 2022. Respondent reported that some facilities were not currently admitting new patients or making any admission decisions due to Covid-19 outbreaks, some had long wait lists, some had no open beds, and some did not respond. ██████████ is still holding a bed for Appellant.

Respondent's efforts to allow Appellant to remain at Northwoods have shown that Respondent cannot meet Appellant's needs and assure her safety. Respondent has proven its grounds for discharge/transfer, and that ██████████ is a suitable location for Appellant.

DECISION

I find that the transfer is necessary at this time.

The appeal by Appellant is therefore DENIED.

Respondent is authorized to transfer Appellant in accordance with its ██████████ 2022 Discharge Notice. Such transfer shall occur on or before ██████████ 2022. The parties are directed to take the steps necessary to facilitate a transfer at a time in ██████████ when Ms. ██████████ is in New York. Ms. ██████████ upon receipt of this decision, must file the required Petition of Placement in ██████████ and make all necessary travel arrangements to be in New York to facilitate the transfer by ██████████ 2022.

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: New York, New York
May 3, 2022

Ann Gayle

Ann Gayle
Administrative Law Judge

[REDACTED] Northwoods

TO: [REDACTED]

Melinda Sheppard, SW
Northwoods Rehabilitation & Nursing Center
7 Keeler Avenue
Moravia, New York 13118