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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

June 28, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Beth Abraham Center
612 Allerton Avenue
Bronx, New York 10467

Erica Schwartz, DSW
Beth Abraham Center
612 Allerton Avenue
Bronx, New York 10467

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

Beth Abraham Center for Rehabilitation and Nursing

Respondent,

to discharge Appellant from a residential health care facility.

COPY

DECISION
DA22-5820

Before: Rayanne L. Babich
Administrative Law Judge (ALJ)

Dates: June 21, 2022

Held at: Webex videoconference

Parties: ██████████ Appellant
c/o Beth Abraham Center for Rehabilitation and Nursing
612 Allenton Avenue
Bronx, New York 10467

Erica Schwartz, Director of Social Work
Beth Abraham Center for Rehabilitation and Nursing
612 Allenton Avenue
Bronx, New York 10467

JURISDICTION

Beth Abraham Center for Rehabilitation and Nursing (Facility), a nursing home subject to Article 28 of the Public Health Law, through Notice of Discharge dated ██████████ 2022, determined

to transfer [REDACTED] [REDACTED] (Appellant) to the [REDACTED] Shelter. The Appellant filed an appeal of the discharge to the New York State Department of Health pursuant to 10 NYCRR 415.3(i).

RECORD

ALJ Exhibits: I – Notice of Transfer/Discharge, [REDACTED] 2022
II – Letter with Notice of Hearing

Facility Exhibits: 1 – Resident Face Sheet; Social work letter, [REDACTED] 2022; Nurse practitioner letter, [REDACTED], 2022; and Brief Interview for Mental Status, [REDACTED] 2022
2 – Social work progress notes, [REDACTED] – [REDACTED] 2022
3 – Physical and occupational therapy records, [REDACTED] – [REDACTED] 2022
4 – Nursing progress notes, [REDACTED] 2022

Facility Witnesses: Erica Schwartz, Director of Social Work
Maria Araujo, Social Worker
Mavis Neequaye, Nurse Practitioner
Jacquelyn Tureene, Director of Rehabilitation
Serge Absolu, Nurse Manager

Appellant Exhibit: None

Appellant Witness: [REDACTED], Appellant

The Appellant appeared pro se and provided testimony. Erica Schwartz, Director of Social Work, represented the Facility. The hearing was digitally recorded. (R. 1:22:55.)

FINDINGS OF FACT

1. Beth Abraham Center for Rehabilitation and Nursing is a nursing home located in Bronx, New York. [Ex I, II, 1.]
2. The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED] 2021, for short-term rehabilitation following a hospitalization due to a [REDACTED]. The Facility provided the Appellant with physical and occupational therapies to improve his mobility,

ambulation, transferring, and performance of his activities of daily living. He met his treatment goals and was discharged from occupational and physical therapy services on [REDACTED] and [REDACTED], 2022, respectively. [Ex 1, 3; R. 28:07, 39:06, 41:20, 45:48.]

3. The Appellant can self-administer his medications and complete his activities of daily living independently. [Ex 1, 3, 4.]
4. The Facility's proposed plan is to discharge the Appellant to [REDACTED] Shelter located at [REDACTED]. The shelter has not accepted the Appellant for placement. [Ex I; R. 34:51.]

ISSUE

Has the Facility met its burden of proving that the Appellant's health has improved sufficiently so he no longer needs nursing home care and that its discharge plan is appropriate?

APPLICABLE LAW

1. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(i), which provides, in pertinent part:
 - (1) With regard to the 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:

(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; *See also* PHL 2803-z.

2. Upon discharge or transfer, the Facility shall

ensure complete documentation in the resident's clinical record when the facility transfers or discharges a resident under any of the circumstances specified in subparagraph (i) of this paragraph. 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; 10 NYCRR 41503(i)(1)(ii).

3. The Facility has the burden of proving that the "discharge or transfer is/was necessary and the discharge plan appropriate." 10 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

The Facility has failed to prove that the discharge is necessary because the Appellant's health has improved sufficiently so he no longer needs skilled nursing care. 10 NYCRR 415.3(i).

The Facility failed to submit documentation by a physician in the Appellant's medical record stating "discharge is necessary" due to the sufficient improvement of his health so that he no longer requires the services offered by the Facility, as required. 10 NYCRR 415.3(i)(1)(ii)(b) and (iii)(b). The Facility claimed discharge was necessary because the Appellant successfully met his therapy goals and is independent in his activities of daily living yet failed to submit the necessary supporting medical documentation. [Ex 1, 3.] The Appellant expressed concerns that he continues to need physical therapy since it was discharged on [REDACTED] 2022, because he remains at risk for falls due to experiencing difficulties navigating stairs and ambulating safely, evidence the Facility failed to rebut. [R. 40:08, 55:13; 57:09, 1:01:27.] In fact, the evidence established the

Appellant has never been evaluated by a Facility physician at any point during his stay in the past seven months. 10 NYCRR 415.3(i)(1)(ii). [Ex 1, 4; R. 1:04:15.]

I find the Facility has not met its burden to establish grounds to discharge the Appellant due to an improvement in the Appellant's health so that he no longer needs the services provided by the Facility. 10 NYCRR 415.3(i)(1)(i)(a)(2). As there are no grounds for discharge established, a determination of the proposed discharge plan will not be reached in this decision, including the Appellant's objection that discharge to a shelter is not safe for his needs. [R. 1:09:55, 1:17:15.]

ORDER

The Facility is not authorized to discharge the Appellant to the location identified in the Notice of Discharge dated [REDACTED], 2022.

Dated: June 28, 2022
Albany, New York



Rayanne L. Babich
Administrative Law Judge

TO:

■■■■ Appellant
c/o Beth Abraham Center for Rehabilitation and Nursing
612 Allenton Avenue
Bronx, New York 10467

Erica Schwartz, Director of Social Work
Beth Abraham Center for Rehabilitation and Nursing
612 Allenton Avenue
Bronx, New York 10467