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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

December 8, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o The Riverside Premiere Rehabilitation & Healing Center
150 Riverside Drive
New York, New York 10024

Allison Bellin, Director of Social Work
The Riverside Premiere Rehabilitation & Healing Center
150 Riverside Drive
New York, New York 10024

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,

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: nm
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

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

■■■■ ■■■■

DECISION

Appellant,

from a determination by

THE RIVERSIDE PREMIERE REHABILITATION & HEALING CENTER,

to discharge him from a residential health care facility.

Before: Kimberly A. O'Brien
Administrative Law Judge

Held at: Videoconference via WebEx

Dates: December 7, 2022

Parties: ■■■■ ■■■■
c/o The Riverside Premiere Rehabilitation & Healing Center
150 Riverside Drive
New York, New York 10024
By: Pro Se

The Riverside Premiere Rehabilitation & Healing Center
150 Riverside Drive
New York, New York 10024
By: Allison Bellin, Director of Social Work

JURISDICTION

By notice dated [REDACTED] 2022, The Riverside Premiere Rehabilitation & Healing Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] [REDACTED] (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

Facility Exhibits: 1–Resident’s Progress Note [REDACTED]/2022 & [REDACTED]/2022
2–Resident’s Progress Note [REDACTED]/2022- [REDACTED]/2022
3–Resident’s Progress Note [REDACTED]/2022

Appellant Exhibits: None

Facility Witnesses: Allison Bellin, Director of Social Work
Robertine Williams, Nurse Manager 7th Floor
Jeffrey De Guzman, Appellant’s Social Worker

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. (Exhibit [Ex.] 1; Testimony [T.]
2. The Appellant is independent in his activities of daily living (ADLs). (Ex.1,2,3; T. Williams, De Guzman)
3. The Appellant is independent with all his activities of daily living and schedules his own appointments in the community. (Ex. 1,2,3; T. Williams, De Guzman)
4. The Appellant has no skilled nursing needs, and all his needs can be safely managed in the community. (Ex.1,2,3; T. Williams)
5. On [REDACTED], 2022, the Facility issued a Transfer/Discharge Notice (Discharge Notice) to the Appellant. The 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. The proposed discharge is to [REDACTED], New York. (ALJ Ex. I, Facility Ex. I; T. De Guzman, Bellin)
6. The Appellant timely appealed the Facility's discharge determination and proposed discharge location. (ALJ Ex. 1)
7. 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

Appellant was admitted to the Facility for short-term rehabilitation. Ms. Williams, Nurse Manager 7th Floor, testified that the Appellant is medically stable and is independent with all his ADLs and he has no skilled needs, and that this was confirmed by Dr. Bernard, Facility Physician.

Mr. De Guzman, Appellant's Social Worker, testified that Dr. Bernard has confirmed that the discharge is necessary and the discharge plan to an assisted living facility is appropriate to meet the Appellant's needs. Appellant rented a room in the community before being admitted to the Facility and the room is no longer available. Appellant stated that he did not wish to live in an assisted living facility and said he wanted to find a room or an apartment on his own, and he refused to go to an ALF or a shelter.

Ms. Bellin, Director of Social Work, testified that the Facility's proposed discharge location is to an assisted living facility (ALF), Central Assisted Living. She testified that up until the time of the hearing Appellant refused to meaningfully engage in his discharge planning and was "vague" about his financial resources and about how he would go about finding housing.

Appellant testified that he agrees that he no longer needs the care provided by the facility. He said he wants to find a room and eventually find an apartment to rent where he can live independently. Appellant said he will not go to [REDACTED], but he will "consider" going to "[REDACTED]," which are ALFs located in [REDACTED] ALFs). He does not want to live in an "institution," but said he now understands he could look for a room or an apartment while he is living in an ALF. The Appellant testified that he called the [REDACTED] ALFs and that he was told "they have a room" and that he will "consider" a placement in one of the [REDACTED] ALFs or he will find a room or apartment to rent in the remaining time he has at the Facility (alternative discharge placement).

The Facility has met its burden to show that the discharge is necessary, and that the evidence supports that the Appellant's health has improved sufficiently such that he no longer needs the services of a skilled nursing facility. Appellant has completed his rehabilitation program

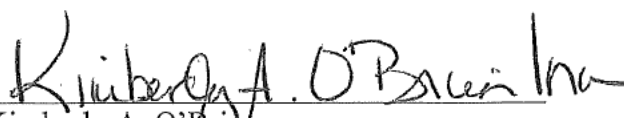
at the Facility and his medical needs can be met in the community. [REDACTED] is available and an appropriate discharge location. At the time of the hearing, Appellant agreed to work with the Facility to secure an alternative discharge placement. Ms. Bellin testified that the Facility is open to assisting the Appellant with securing an alternative discharge placement during the Appellant's remaining time at the Facility, but it is up to the Appellant to actively engage in the process. If an alternative discharge placement is not secured, the Facility is authorized to discharge the resident to Central Assisted Living.

DECISION

The Facility has established that its determination to discharge the Appellant was correct, and that its discharge/transfer location is appropriate.

1. The Facility is authorized to discharge the Appellant on or after [REDACTED] 2023 in accordance with its [REDACTED], 2022 discharge notice.
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
December 7, 2022


Kimberly A. O'Brien
Administrative Law Judge

TO: [REDACTED]
c/o The Riverside Premiere Rehabilitation & Healing Center
150 Riverside Drive
New York, New York 10024

Allison Bellin, Director of Social Work
The Riverside Premiere Rehabilitation & Healing Center
150 Riverside Drive
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