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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

April 27, 2023

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Bellevue Hospital
462 1st Avenue
New York, New York 10016

Casey Linder, SW
Bellevue Hospital
462 1st Avenue
New York, New York 10016

Jay Taub, Administrator
Woodcrest Rehabilitation and
Residential Center
119-09 26th Avenue
Flushing, New York 11354



RE: In the Matter of [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,

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

[REDACTED]

DECISION

Appellant,

from a determination by

WOODCREST REHABILITATION AND
RESIDENTIAL CENTER,

to discharge him from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Date: April 25, 2023

Parties: [REDACTED]
c/o Bellevue Hospital
462 1st Avenue
New York, New York 10016

Woodcrest Rehabilitation and Residential Center
119-09 26th Avenue
Flushing, New York 11354
By: Jay Taub, Nursing Home Administrator

Interested Parties: Bellevue Hospital
462 1st Avenue
New York, New York 10016
By: Casey Linder, Social Worker

[REDACTED]

JURISDICTION

On [REDACTED], 2023, Woodcrest Rehabilitation and Residential Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [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 recording of the proceeding was made.

HEARING RECORD

The Appellant was not present during the hearing.

Facility Witnesses: Jay Taub, Nursing Home Administrator

Facility Exhibits: 1 – Patient Review Instrument
2 – Progress Notes
3 – Medication Administration Report

Hospital Witnesses: Casey Linder, Social Worker
Jonathan Whitehouse, M.D.
Neitha Parker-Cleveland, Social Work Supervisor

Hospital Exhibits: none

Other Witnesses: [REDACTED] [REDACTED] Appellant's [REDACTED]

ALJ Exhibits: 1 – Letter with Notice of Hearing and Transfer/Discharge Notice

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male with a primary diagnosis of [REDACTED] (Testimony [T.] Whitehouse.)
2. The Appellant was admitted to the Facility on [REDACTED] 2022. (T. Taub.)
3. The Appellant was sent to Bellevue Hospital (Bellevue) for evaluation on [REDACTED] 2023, after [REDACTED] another resident at the Facility with a [REDACTED] (T. Taub.)
4. The Appellant currently takes [REDACTED] 1 mg twice daily (orally) and has an as needed order for [REDACTED] 1 mg (orally) for [REDACTED]. He has no psychiatric diagnoses and is medically cleared for discharge back to the Facility. (T. Whitehouse.)
5. The Facility issued a Transfer/Discharge Notice dated [REDACTED] 2023, stating that the Appellant is discharged to Bellevue on the basis that the health and safety of individuals in the Facility would otherwise be endangered, as evidenced by "past [REDACTED] behavior." (ALJ Ex. I.)
6. The Facility refuses to accept the Appellant back, stating it is fearful that the resident is a danger to himself and others. (T. Taub.)
7. A telephone conference with the parties was held on March 30, 2023, in which the stated discharge location of Bellevue was discussed. The parties were afforded time to locate a mutually agreeable safe and appropriate discharge location for the Appellant and were to report the results to ALJ Champion by April 10, 2023. The Facility identified several possible locations and sent a list of the same to Bellevue. No report of results was provided to ALJ Champion and this hearing was scheduled. At the hearing it was disclosed that referrals went to a few of the identified facilities that were approved by the Appellant's family, but that none had accepted the Appellant. (T. Linder.)
8. The Appellant has remained at Bellevue 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].) Excluding reasons of nonpayment and facility closure, a resident may be transferred only when:

- (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;
- (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;

(10 NYCRR 415.3[i][1][i][a].)

A Facility must ensure complete documentation in the resident's clinical record when a resident is discharged. When discharge is necessary due to the endangerment of the health or safety of other individuals in the facility, documentation shall be made by a physician. (10 NYCRR 415.3[i][1][i][b].)

Facilities are required to provide written notice of transfer or discharge that includes the following:

- (a) The reason for transfer or discharge;

- (b) The specific regulations that support, or the change in Federal or State law that requires, the action;
- (c) The effective date of transfer or discharge;
- (d) The location to which the resident will be transferred or discharged;
- (e) a statement that the resident has the right to appeal the action to the State Department of Health, which includes:
 - (1) an explanation of the individual's right to request an evidentiary hearing appealing the decision;
 - (2) the method by which an appeal may be obtained;
 - (3) in cases of an action based on a change in law, an explanation of the circumstances under which an appeal will be granted;
 - (4) an explanation that the resident may remain in the facility (except in cases of imminent danger) pending the appeal decision if the request for an appeal is made within 15 days of the date the resident received the notice of transfer/discharge;
 - (5) in cases of residents discharged/transferred due to imminent danger, a statement that the resident may return to the first available bed if he or she prevails at the hearing on appeal; and
 - (6) a statement that the resident may represent him or herself or use legal counsel, a relative, a friend, or other spokesman;
- (f) the name, address and telephone number of the State long term care ombudsman;
- (g) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act;
- (h) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(10 NYCRR 415.3(i)(1)(v).)

Facilities are also required to "provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge."

(10 NYCRR 415.3(i)(1)(vi).)

Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii)(b), the Facility bears the burden to prove a discharge is necessary and appropriate.

DISCUSSION

The Facility seeks to discharge the Appellant on the grounds that the health and safety of individuals in the facility would otherwise be endangered. (ALJ Ex. 1.) The Facility's assertion that the Appellant [REDACTED] another Facility resident with a [REDACTED] is uncontroverted. Jonathan Whitehouse, M.D., is the Appellant's current attending physician at Bellevue. He took over the Appellant's care on the day prior to the hearing and has only met him once. However, he credibly testified that he reviewed the Appellant's medical record to become familiar with the Appellant. Dr. Whitehouse testified that the Appellant was receiving .5 mg of [REDACTED] twice daily upon his arrival at the hospital on [REDACTED] 2023. Bellevue increased the dosage to 1 mg twice daily on [REDACTED], 2023, and the Appellant has been more stable since that adjustment. Dr. Whitehouse testified that the Appellant has received two doses of his prescribed as-needed [REDACTED] (administered on [REDACTED] and [REDACTED] over the eight days preceding the hearing. He further testified that the two [REDACTED] medications prescribed to the Appellant ([REDACTED] and [REDACTED] as well as the dosage and frequency at which he has been receiving them, is normal for a person with a diagnosis of [REDACTED].¹

Dr. Whitehouse testified that [REDACTED] and [REDACTED] tablets are commonly dispensed to [REDACTED] patients by family members in home care settings to manage behaviors and could easily be dispensed in the nursing home with the standing as-needed order should the Appellant become agitated. Dr. Whitehouse testified that upon arriving at the hospital on [REDACTED] [REDACTED] 2023, the Appellant had 1:1 supervision, which was discontinued in [REDACTED]. He was unaware of the specific reason or behavior of the Appellant associated with his [REDACTED] that led to [REDACTED] being administered on [REDACTED] and [REDACTED] but noted that the Appellant's medical records does not reflect any component of [REDACTED] with the [REDACTED]. He further testified that by

¹ Dr. Whitehouse testified that the Appellant's primary diagnosis is [REDACTED] however [REDACTED] is suspected. The Appellant's medical records also make note of "[REDACTED]" and "[REDACTED] complicated by [REDACTED]". (Facility Ex. 3.)

all accounts the Appellant has occasional periods of [REDACTED] but is easily redirectable. Dr. Whitehouse testified that there are no more interventions that the hospital can do to optimize the Appellant further before sending him back to the Facility.

Casey Linder, a hospital social worker who sees the Appellant in the hospital almost every day and has had a lot of time to observe him, testified that the best location for Appellant is the Facility as it is known to him so there would be no concerns of reacclimating and it is geographically close to his family where his [REDACTED] and [REDACTED] can visit him frequently. Ms. Linder testified as to her concerns regarding the Appellant, who has no acute illness, becoming deconditioned or getting a hospital-acquired illness the longer he remains at the hospital.

Neitha Parker-Cleveland, the hospital social work supervisor, testified that the Appellant is appropriate, calm and engageable. She testified that that he belongs in a facility where he can be around other residents rather than isolated to a hospital room.

The Resident's [REDACTED] testified that the hospital is far away from her and the Appellant's [REDACTED] and that she wants the Appellant returned to the Facility. She testified that she has seen the Appellant in person at the hospital three times since his admission and that he has been calm and happy.

Jay Taub, the nursing home administrator at the Facility, testified that he is fearful that the Appellant will be [REDACTED] if returned to the Facility. He testified that he has not seen evidence of any change in the Appellant's behaviors since being sent to the hospital and he believes the Appellant is a danger to himself and others. Mr. Taub expressed concern over not having specific information on the Appellant's [REDACTED] leading to the hospital administering the Appellant's as-needed [REDACTED] on [REDACTED]. Mr. Taub testified that the Facility is trained to deal with residents who have [REDACTED] provided they are stable and not aggressive. He did not provide any information as to steps the Facility has taken to manage the Appellant's [REDACTED].

Despite having only met the Appellant the day prior to the hearing, Dr. Whitehouse credibly testified that the Appellant is medically stable for return to the Facility. Episodes of [REDACTED] are common and to be expected from an individual with [REDACTED]. The evidence supports that the Appellant's behaviors can currently be managed in a nursing home setting with his increased dosage of [REDACTED] as-needed [REDACTED] and appropriate supervision/behavioral management strategies. The Appellant currently has no acute condition requiring hospital admission. The Facility has not met its burden to prove that discharge is necessary.

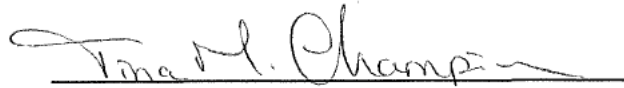
The Facility has also blatantly failed to develop an appropriate discharge plan for the Appellant. The Facility understandably sent the Appellant to the hospital for evaluation on [REDACTED] [REDACTED] 2023. However, eleven days later, it issued a defective Transfer/Discharge Notice listing Bellevue Hospital as the discharge location. (ALJ Ex. I.) It is well established that discharge to a hospital, an acute care facility, is not an appropriate discharge plan, nor does it address how Appellant's medical needs will be met after discharge from the hospital as required under applicable laws and regulations. The Facility previously accepted the Appellant into its care and it cannot simply abandon its obligation to the Appellant by sending him a hospital and refusing to re-admit him after he has been cleared by the hospital to return to the facility.

DECISION


Woodcrest Rehabilitation and Residential Center has not established that the Appellant's discharge was necessary and that the discharge plan was appropriate.

1. Woodcrest Rehabilitation and Residential Center is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the Facility, pursuant to 10 NYCRR 415.3(i)(2)(i)(d).
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: Albany, New York
April 27, 2023



Tina M. Champion
Administrative Law Judge

TO: 
c/o Bellevue Hospital
462 1st Avenue
New York, New York 10016

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Woodcrest Rehabilitation and Residential Center
119-09 26th Avenue
Flushing, New York 11354
jt@woodcrestrehab.com

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Bellevue Hospital
462 1st Avenue
New York, New York 10016
linderc@nychhc.org

