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**Department
of Health**

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

June 16, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o The Phoenix Rehabilitation
and Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201

David Roll, NHA
The Phoenix Rehabilitation
and Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201

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

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

██████████ ██████████

Appellant,

from a determination by

**The Phoenix Rehabilitation
and Nursing Care Center,**

Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION

CASE #316682

Hearing Before: Kimberly A. O'Brien
Administrative Law Judge (ALJ)

Hearing Date: June 13, 2023
By videoconference

Parties: The Phoenix Rehabilitation and Nursing Care Center
140 Edwards Street
Brooklyn, New York
By: David Roll, Nursing Home Administrator
droll@thephoenixrehab.com

██████████ ██████████

The Phoenix Rehabilitation and Nursing Care Center
██

██████████ The Phoenix Rehabilitation and Nursing Care Center

JURISDICTION

The Phoenix Rehabilitation and Nursing Care Center (the Respondent or The Phoenix), is a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge ██████████ ██████████ (the Appellant) from care and treatment in its nursing home. Pursuant to 10 NYCRR 415.3, the Appellant appealed the discharge determination to the New York State Department of Health.

The Respondent's exhibits 1-3 were admitted into the record and Respondent presented witnesses Olusegun Ogunfowora, M.D., and Tatyana Polyak, Director of Social Work (DSW Polyak). The Appellant did not offer any exhibits, but asked questions of Respondent's witnesses and testified on her own behalf. The notice of hearing and the discharge notice are in evidence as ALJ Exhibit I. The hearing was held, and a recording was made, 49 minutes and 10 seconds.

FINDING OF FACTS

1. The Phoenix is a residential health care facility, or nursing home, located in Brooklyn, New York. Appellant ██████████ ██████████ age ██████████ was admitted to the facility on ██████████ 2022 for short term rehabilitation after hospitalization. Her diagnoses include ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ (Exhibit 1; Testimony Dr. Ogunfowora.)
2. By notice dated ██████████ ██████████ 2023, the Respondent advised the Appellant that it had determined to discharge her on the grounds that her health has improved sufficiently that she no longer needs the services provided by the facility. (ALJ Exhibit I.)

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3. The Appellant has been discharged from rehabilitation therapy. The resident uses a wheelchair and can transfer independently. She is alert and oriented and is independent with her care and decision making. Her medical needs can be met on an outpatient basis. (Testimony Dr. Ogunfowora, DSW Polyat; Exhibit 1, Exhibit 2, Exhibit 3.)

4. Dr. Ogunfowora and the Appellant's interdisciplinary care team at the facility have determined that she is not in need of nursing home care and that she can be discharged to a homeless shelter. (Testimony Dr. Ogunfowora, DSW Polyat; Exhibit 1.)

5. The ██████████, 2023, discharge notice advised the Appellant that she would be discharged to the ██████████ Shelter, ██████████ New York (shelter). (ALJ Exhibit I.)

6. The Respondent's discharge plan includes transportation to the shelter, and she will be given a wheelchair and appropriate referrals for medications and medical care. (ALJ Exhibit I.)

7. The Appellant requested that the Respondent pursue a placement for her at the shelter and she has been accepted. The Appellant has not cooperated with or participated in reasonable efforts made by the Respondent to develop an alternative discharge plan. (Testimony DSW Polyat; Exhibit 2, Exhibit 3.)

8. The Appellant remains at The Phoenix pending the outcome of this proceeding.

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ISSUES

Has the Respondent established that the transfer is necessary, and the discharge plan is appropriate?

APPLICABLE LAW

A residential health care facility, or nursing home, 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. PHL 2801; 10 NYCRR 415.2(k).

Transfer and discharge rights of nursing home residents are set forth in Department regulations. A resident may be transferred when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that 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. 10 NYCRR 415.3(i)(1)(i)(a)(2).

The facility must 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. The facility must permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility. 10 NYCRR 415.3(i)(1)(vi-vii).

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

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DISCUSSION

Dr. Ogunfowora, Appellant's treating physician, testified that he and the care team at The Phoenix have determined that Appellant is no longer in need of nursing home care and that discharge to the shelter is appropriate. DSW Polyat testified that she attempted to work with the Appellant to identify a discharge location other than the shelter and the Appellant either did not qualify, the placement was unavailable, or she rejected the proposed placement. Recently Appellant requested that DSW Polyat apply to the shelter for her, which she did. The shelter application contains many questions about the Appellant's condition and level of independence and includes a question about whether she uses a wheelchair. The answers provided in the shelter application are consistent with the Appellant's condition and level of independence, and the facility answered "YES" to the question about whether Appellant uses a wheelchair. *See* Exhibit 3. When DSW Polyat notified Appellant that she was accepted into the shelter, she rejected the shelter placement.

The Appellant testified that she could walk when she came to the facility and that now she uses a wheelchair and believes that she should remain at The Phoenix and receive therapy until she can walk again. The Appellant claims that she contacted the shelter and was told that she will not be accepted by the shelter because she uses a wheelchair.

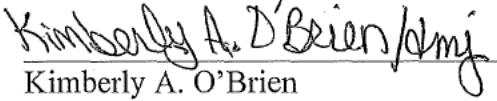
██████████ Phoenix Rehabilitation and Nursing Care Center

The documentary evidence, and the testimony of Dr. Ogunfowora and DSW Polyat support that Appellant no longer requires the care provided by the facility, that Respondent has made reasonable attempts to assist and work with the Appellant to develop an alternative discharge plan and the Appellant has rejected alternative discharge locations, and that the shelter has accepted the Appellant and it is appropriate to meet her needs.

DECISION: The Respondent has established valid grounds for the discharge of Appellant and has established that the discharge plan is appropriate.

The Respondent is authorized to discharge the Appellant in accordance with the ██████████ 2023 discharge notice.

Dated: Albany, New York
June 16, 2023


Kimberly A. O'Brien
Administrative Law Judge
Bureau of Adjudication