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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

August 1, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002

Marne Salomon, DSW
New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002

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: 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

New Gouverneur Hospital SNF,

Respondent,

to discharge Appellant from a residential health care facility.

DECISION

COPY

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

Date: July 18 and July 24, 2023

Held at: New York State Department of Health
Webex videoconference

Parties: ██████████ Appellant
c/o New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002
Pro se

New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002
By: Marne Salomon, Director of Social Work

JURISDICTION

By notice dated ██████████ 2023, New Gouverneur Hospital SNF, a residential health care facility (Facility), determined to discharge ██████████ (Appellant), from care in its Facility.

The Appellant appealed the proposed discharge on ██████████ 2023.

RECORD

ALJ Exhibits [Ex]: I – Notice of Hearing, June 13, 2023

Facility Exhibits: 1 – Admission Record
2 – Notice of Discharge, [REDACTED], 2023
3 – Brief Interview for Mental Status, [REDACTED] 2023
5 – Task List Report for Certified Nursing Aide
6 – Social Work Progress Notes, [REDACTED] 2022 to [REDACTED] 2023
7 – Medical Progress Note, [REDACTED], 2023
7a – Medical Progress Note, [REDACTED], 2023
8 – Physical Therapy Progress Note, [REDACTED], 2023
9 – Occupational Therapy Summary, [REDACTED] to [REDACTED] 2022;
Occupational Therapy Evaluation and Plan of Care and Progress Note,
[REDACTED] 2023
10 – Physical Therapy Discharge Summary, [REDACTED] to [REDACTED],
2022; Physical Therapy Evaluation and Plan of Care, [REDACTED] 2023;
Physical Therapy Evaluation and Plan of Care and Progress Note, [REDACTED]
2023

Appellant Exhibit: None

Facility Witnesses: Sherry Humphrey, M.D., Chief Medical Officer for the Facility
Danny Wong, Director of Rehabilitation

Appellant Witness: [REDACTED] [REDACTED]

The Appellant appeared at the hearing on July 18, 2023 but declined to participate on July 24, 2023. The hearings were digitally recorded. Citations from July 18, 2023 [1:11:15] are cited as “R1” and from July 24, 2023 [3:46] are cited as “R2.”

SUMMARY OF FACTS

1. The Appellant was admitted to the Facility on [REDACTED] 2022 for short-term rehabilitation services following a hospitalization for a [REDACTED] in her [REDACTED] [REDACTED] [Ex 1, 7, 7a; R1 29:59.]
2. The Appellant ambulates with a rollator while wearing a medical [REDACTED] on her [REDACTED]. She is independent in her activities of daily living. [Ex 7-9; R1 30:19.]

3. The Appellant successfully completed occupational and physical therapy. She was discharged from occupational therapy on [REDACTED], 2022 and from physical therapy on [REDACTED] 2022. [Ex 9, 10; R1 30:19, 46:20.]
4. On [REDACTED] 2023, the Appellant's treating physician at the Facility, Sergei Lapinel, M.D., documented in the Appellant's clinical record that the Appellant has achieved all anticipated goals for her injury and is medically cleared for discharge. [Ex 7.]
5. On [REDACTED], 2023, the Facility issued a Notice of Discharge to the Appellant which stated that "the resident's health improved sufficiently so that the resident no longer needs the services of the facility." [Ex 2.]
6. The Facility has proposed to discharge the Appellant's home in [REDACTED] New York where she resided prior to her admission. [Ex 2; R1 38:41, 39:31.]
7. On [REDACTED], 2023, Dr. Lapinel documented in the Appellant's clinical record that she is ready for discharge to her home. [Ex 7a.]
8. The Appellant remains at the Facility pending the outcome of the hearing.

ISSUES

Has the Facility met its burden of proving that the discharge is necessary and that the 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.

2. Before discharging a resident, a residential health care facility shall 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).
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 is seeking to discharge the Appellant because her health has improved sufficiently so that the resident no longer needs the services of the Facility. [Ex 2.] The Facility determined that the Appellant has successfully completed rehabilitation services for her injury and further follow up care can be provided in the community. [Ex 7, 7a; R1 30:19, 33:37.] The Appellant ambulates independently wearing a medical [REDACTED] and using a rollator. [Ex 7, 7a; R1 34:03.] She performs all activities of daily living. [R1 30:26.] The Appellant objected to the discharge because she believes that she still requires a lot of assistance from the Facility, specifically with applying the medical [REDACTED] [R1 51:04.]

The Appellant's treating physician at the Facility, Sergei Lapinel, M.D., documented in the medical record on [REDACTED] 2023 that the Appellant has achieved all anticipated goals for physical therapy at the Facility and is medically cleared for discharge. [Ex 7.]

Chief Medical Officer at the Facility, Sherry Humphrey, M.D., testified that the goal of the Appellant's stay at the Facility was to provide rehabilitation services while the [REDACTED] in her [REDACTED] is healing. [R1 29:59.] Dr. Humphrey explained that although the [REDACTED] may take a long time to heal completely, the Appellant has completed physical therapy and is medically appropriate for discharge to the community. [R1 31:23.] Upon discharge, Dr. Humphrey recommended that the Appellant continue with her current [REDACTED] provider and resume care with her primary care provider. [R1 30:47, 34:22.]

The Appellant successfully completed occupational therapy and physical therapy, and she was discharged on [REDACTED] and [REDACTED], 2022, respectively. [Ex 9, 10; R1 30:19, 46:20.] The Appellant was reassessed for both physical and occupational therapy on [REDACTED] 2023 and no services were recommended. [Ex 9, 10.] The Appellant was again reassessed for physical therapy on [REDACTED] and [REDACTED] 2023 and no services were recommended. [Ex 8-10.] The Director of Rehabilitation for the Facility, Danny Wong, testified that he supervises the physical therapist who assessed the Appellant on [REDACTED], 2023. The physical therapist found that the Appellant can ambulate [REDACTED] or more feet with a rollator and navigate multiple turns, negotiate [REDACTED] steps using a handrail and cane, and can apply and remove her medical [REDACTED] [Ex 8; R1 19:44.] Mr. Wong explained that these tasks are important because it shows that the Appellant can ambulate an average distance in the community as well as face common barriers such as stairs and turns. [R1 23:39.] Mr. Wong testified that the Appellant's ability to apply and remove her medical [REDACTED] shows her functional ability to attend to her personal needs and care. [R1 24:19.]

The Appellant's objection to the discharge because she still requires services from the Facility is not persuasive. The Appellant testified that the Facility assists with gathering toiletry supplies, delivering meals or take-out food when she does not attend the dining room, providing her medications, and assisting with donning the medical [REDACTED] [R1 55:01, 57:04, 1:04:14.] However, these supplies and meal delivery tasks are provided to all residents and are inconsequential to the skilled services the Appellant received at the Facility. Dr. Humphrey testified that the Appellant can self-administer her medications. [R1 30:26.]

The Facility has proposed to discharge the Appellant to her home in [REDACTED] New York, where she lived prior to her stay at the Facility. [Ex 2; R1 38:41.] On [REDACTED] 2023, Dr. Lapinel documented in the Appellant's clinical record that she is ready for discharge to her home. [Ex 7a.] The Appellant does not oppose returning to her home but objected to the plan to be discharged because she does not believe she is ready to be at home without support. [R1 1:06:01.]

Director of Social Work, Marne Salomon, testified that she visited the exterior of the Appellant's home in [REDACTED] 2023 and confirmed there are [REDACTED] steps and two handrails leading into the residence. [R1 40:50.] Ms. Salomon explained that she and Facility staff tried to obtain consent from the Appellant to enter her home and inspect the interior, but the Appellant declined. [R1 41:08.] However, as Ms. Salomon confirmed, there is no reason to believe that there are any safety concerns with the Appellant's return to her home. [R1 41:43.] The Appellant did not dispute that her home is appropriate.

Ms. Salomon also testified that a referral was made to a Certified Home Care Agency (CHAA) for home care services. [R1 39:31.] Once a discharge date is determined, the CHHA will contact the Appellant by telephone the day before and will assess her at home the day after

discharge. [R1 42:34.] The CHHA will provide any services or support they deem necessary, and the Appellant will follow up with her community medical providers. [R1 43:05.]

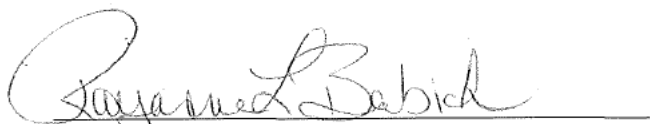
The Facility has met its burden to prove that the discharge is necessary and that the proposed discharge location is appropriate.

ORDER

New Gouverneur Hospital SNF has met its burden to prove that its determination to discharge the Appellant is necessary, and that discharge to her home at [REDACTED], New York is appropriate.

1. The Facility is authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED] 2023.
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: July 31, 2023
Albany, New York



Rayanne L. Babich
Administrative Law Judge

TO:

██████████, Appellant
c/o New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002

Marne Salomon, Director of Social Work
New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002