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**Department
of Health**

KATHY HOCHUL
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

LISA PINO, M.A., J.D.
Executive Deputy Commissioner

August 27, 2021

CERTIFIED MAIL/RETURN RECEIPT AND EMAIL

██████████
c/o Jacqueline Vanessa Lutchmidat, LMSW, MBA
Director, Social Work Department
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St. John's Episcopal Hospital
327 Beach 19th Street RM CPB 031
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Brookhaven Rehabilitation & Healthcare
250 Beach 17th Street
Far Rockaway, New York 11691

██████████ ██████████
Brookhaven Rehabilitation & Healthcare
250 Beach 17th Street
Far Rockaway, New York 11691

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,

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

JURISDICTION

Pursuant to Public Health Law §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), Brookhaven Rehabilitation & Health Center (“Respondent” or “Facility”) is a residential health care facility/nursing home 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.

Resident rights are set forth at 10 NYCRR 415.3, *inter alia*, it provides that before a facility discharges a resident it shall notify the resident of the transfer/discharge and its reasons in writing and in a language and manner the resident can understand and must be provided before transfer/discharge; state the reason the transfer/discharge is necessary; and have a discharge plan including identifying a discharge location that is available and appropriate to meet the resident’s needs. A resident who believes the facility has erroneously determined that the transfer/discharge is necessary has the right to an administrative hearing. The facility has the burden of proving that the transfer/discharge is necessary and the discharge plan is appropriate.

STATEMENT OF THE CASE

On ██████████ 2021, Respondent transferred the Resident from care and treatment in its facility to St. John’s Episcopal Hospital (“Hospital”). The Hospital determined that the Resident was stable and ready to return to its facility and Respondent refused to readmit him. The Facility issued a discharge notice dated ██████████ 2021, with a retroactive discharge date of ██████████ 2021. Respondent stated the reason for the discharge is the Resident’s “██████████ ██████████” but did not identify a discharge location [ALJ Ex. 1]. The Resident appealed the discharge determination to the NYSDOH and has remained in the Hospital awaiting the hearing and the ALJ’s decision. The hearing was held on August 25, 2021 and a transcript was made.¹

Witnesses

The following witnesses testified on behalf of the Resident: ██████████ ██████████ Resident/Appellant; and Jacqueline Lutchmidat, Hospital Director of Social Work. The following Facility representatives testified on behalf of Respondent: Leslie Mason, Administrator; and Dr.

Uthman, MD.

¹ The ALJ issued this Decision and Order in advance of receiving the transcript to expedite the Resident’s return to the Facility.

Exhibits

Documents were accepted into evidence by the Administrative Law Judge

(“ALJ”): ALJ Exhibit 1: Notice of Hearing & ██████████, 2021 Notice of Transfer or Discharge

STATEMENT OF ISSUE

To be determined in this proceeding is whether Respondent established that the discharge is necessary, and whether it provided an appropriate discharge plan.

FINDINGS OF FACT

Citations in parentheses refer to testimony (“T”) and exhibits (“Ex”) found persuasive in arriving at a particular finding.

1. Respondent operates a residential health care facility located in Far Rockaway, New York [ALJ Ex.1].
2. Appellant is a resident of the Facility [ALJ Ex. 1].
3. On ██████████ 2021, Respondent transferred the Resident from the Facility to the Hospital for “treatment /evaluation” of “██████████” exhibited by the Resident [ALJ Ex. 1].
4. Respondent issued a discharge notice dated ██████████ 2021 with a retroactive discharge date of ██████████ 2021; no discharge location was identified. [ALJ Ex. 1; T. Lutchmidat].

DISCUSSION

Dr. Uthman who is the Resident’s attending physician at the Facility testified that he had been working with the Resident to wean him off narcotic pain medications and it has been a challenge. Administrator Mason testified that on ██████████ 2021, the Resident demanded pain medication, became ██████████ and ██████████. The Facility called 911 and the Resident was taken to the Hospital for treatment and evaluation for his behavior.

The Resident testified that he is often in pain and on ██████████ 2021 he requested pain medication and he was ignored. He became ██████████, and he began ██████████ and ██████████. He would like to return to the Facility, but he is open to being placed in a ██████████ facility, closer to his friends and family.

Jacqueline Lutchmidat, Hospital Director of Social Work, testified that on ██████████ 2021 the Resident was treated in the emergency room and ready to be released at approximately 11:00pm. She had several conversations with the Facility and they refused to readmit the Resident. The Resident received the discharge notice and Ms. Lutchmidat assisted him with filing the appeal. The Resident has skilled needs but does not need to be in the Hospital, and she is concerned about the Resident's exposure while the Resident is in the Hospital unnecessarily. The Hospital sent out placement requests to facilities in the ██████████ and a few days ago sent a "blast" to a wider area. The Resident has yet to be accepted by another facility.

Respondent admits that Appellant was not provided with a discharge notice upon his transfer to the Hospital on ██████████ 2021 and that the discharge notice was issued on ██████████ 2021. While Respondent's witnesses described the challenges of managing the Resident's care due to Appellant's alleged ██████████ and ██████████ ██████████ of staff and others, Respondent failed to prove the Resident is currently a danger to himself or others; and Respondent failed to provide an appropriate discharge plan. The Hospital is not an appropriate discharge location.

A ruling that Respondent must immediately readmit the Resident to its Facility was made by the ALJ on the record at the hearing. If the Resident is offered another placement before or after his return to the Facility, he may choose to be transferred to another facility.

ORDER

Respondent must readmit immediately the Resident to its Facility and before it admits any other resident.

This Decision and Order confirms the oral decision made on the record on August 25, 2021.

Dated: Albany, New York
August 26, 2021

Kimberly A. O'Brien /ong
Kimberly A. O'Brien
Administrative Law Judge

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