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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

September 13, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Sprain Brook Manor
77 Jackson Avenue
Scarsdale, New York 10583

Sandra Berkoh, DSW
Sprain Brook Manor
77 Jackson Avenue
Scarsdale, New York 10583

Marnie Mallah, LMSW
Tri-County LTC Ombudsman Program
Office of the State Long Term Care Ombudsman
Long Term Care Community Coalition
10 North Street
Cold Spring, New York 10516

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,

Sean D. O'Brien
Acting Chief Administrative Law Judge
Bureau of Adjudication

SDO: 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

SPRAIN BROOK MANOR REHAB CENTER

to discharge him from a residential health care facility.

COPY

DECISION

Before: Kimberly A. O'Brien
Administrative Law Judge

Held at: Videoconference via WebEx

Dates: September 8, 2022

Parties: ██████████ ██████████
c/o Sprain Brook Manor Rehab Center
77 Jackson Avenue
Scarsdale, New York 10583
By: Pro Se
Support Provided by Marnie Mallah, LMSW
Tri-county LTC Ombudsman Program

Sprain Brook Manor
77 Jackson Avenue
Scarsdale, New York 10583
By: Sandra Berkoh, Director of Social Work

JURISDICTION

By notice dated [REDACTED], 2022, Sprain Brook Manor (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] [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 digital recording was made of the proceeding.

HEARING RECORD

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

- Facility Exhibits: 1 – Resident’s medical records pgs. 1-111
2 – Sandra Berkoh, Director of Social Work, Emails

- Appellant Exhibits: None

- Facility Witnesses: Ashok Chopra, MD – Medical Director
Sandra Berkoh, Director of Social Work
Red Ridon, Director of Rehabilitation
Amelia Mendizabal, Director of Nursing

- Appellant Witnesses: Appellant testified on his own behalf

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted from [REDACTED] Hospital to the Facility on [REDACTED] 2021, for short-term rehabilitation. (Facility Exhibit [Ex.] 1; Testimony [T.]
2. The Appellant received physical therapy (PT) while at the Facility and was discharged from PT on or about [REDACTED] 2022. (Facility Ex. 1; T. Ridon)
3. The Appellant is independent in his activities of daily living (ADLs). (Facility Ex. 1; T. Chopra, Ridon, Mendizabal)
4. The Appellant is able to ambulate without an assistive device and he is independent with all transfers. (Facility Ex. 1; T. Ridon)
5. The Appellant has no skilled nursing needs, and all of his needs can be safely managed in the community. (T. Chopra, Ridon, Mendizabal)
6. 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] Department of Social Services, [REDACTED] (local DSS). (ALJ Ex. I, Facility Ex. I; T. Berkoh)
7. The Appellant timely appealed the Facility's discharge determination and proposed discharge location (ALJ Ex. 1).
8. 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 on [REDACTED] 2022, for short-term rehabilitation and has received PT during his stay. The Appellant was discharged from PT in [REDACTED] 2022 and is independent with all his ADLs.

Dr. Chopra, Medical Director, testified that the Appellant is medically stable and is independent with all his ADLs and he has no skilled needs. He testified that the discharge is necessary and the discharge plan to the local DSS is appropriate. Dr. Chopra arrived at this decision along with the care team that has been working with Appellant throughout his stay.

Mr. Ridon, the Director of Rehabilitation, testified that the Appellant is independent in all his ADLs. Mr. Ridon also testified that the Appellant is able to ambulate independently without an assistive device, and that the Appellant is independent with all transfers.

Ms. Mendizabal, Director of Nursing, testified that the Appellant has no skilled nursing needs. She testified that he is independent with all his ADL's and can independently take his medications. She testified that the Appellant's care can be safely managed in the community.

Ms. Berkoh, Director of Social Work, testified that the Facility's proposed discharge location is to the local DSS. She testified that she has worked with the Appellant's Ombudsperson, Ms. Mallah, at attempting to get the Appellant to engage in discharge planning and to consider an assisted living facility (ALF) and or apply to "██████████" as potential alternatives to a discharge to the local DSS. The Appellant has refused to meaningfully engage in his discharge planning. The Appellant has indicated he is only interested in being discharged to another nursing home. In █████ 2022, Ms. Berkoh sent PRIs out to several nursing homes in the area and Appellant was not accepted because he has no skilled needs [Facility Ex. 2].

The Appellant testified that he is not ready for discharge. He said that he experiences pain and █████ and that he has skilled needs. He believes that he has not been well taken care of at the facility and he would like to be discharged to a different nursing home. He believes that if he is discharged to the community he will "die" because he requires oxygen and other services the Facility provides.

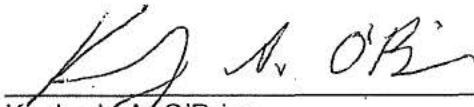
The ALJ ruled on the record that the Facility has met its burden to show that the discharge is necessary, and that the evidence supports that the Appellant's health has improved sufficiently such that he no longer needs the services of a skilled nursing facility. The Appellant has completed his rehabilitation program at the Facility and his medical needs can be met in the community. The ALJ also ruled that discharge to the local DSS is available and an appropriate discharge location. While Ms. Berkoh and Ms. Mallah, Appellant's Ombudsperson, remain open to assisting the Appellant with finding an alternative discharge placement in the it is up to the Appellant to actively engage in the process.

DECISION

Sprain Brook Manor has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Spain Brook Manor is authorized to discharge the Appellant on or after [REDACTED] 2022 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
September 13, 2022



Kimberly A. O'Brien
Administrative Law Judge

TO: [REDACTED]
c/o Sprain Brook Manor
77 Jackson Avenue
Scarsdale, New York 10583

Sandra Berkoh
Director of Social Work
Sprain Brook Manor
77 Jackson Avenue
Scarsdale, New York 10583