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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

October 4, 2022

CERTIFIED MAIL/RETURN RECEIPT

■■■■■
c/o Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

Stevenson Andre, DSW
Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

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

**ArchCare at Terence Cardinal
Cooke Health Care Center**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: WebEx Videoconference

Hearing Date: October 3, 2022

Parties: ArchCare at Terence Cardinal Cooke Health Care Center
1249 Fifth Avenue
New York, New York 10029
By: Stevenson Andre, Social Work Director

██████████
Pro Se

JURISDICTION

By notice dated [REDACTED] 2022, ArchCare at Terence Cardinal Cooke Health Care Center (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant) from the facility. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

Facility witnesses: Nadine Sam, Patient Account Supervisor
Stevenson Andre, Social Work Director
Charlene Garcia, Social Work Manager

Facility exhibits: 1-5

Appellant witnesses: [REDACTED] [REDACTED] Appellant

ALJ exhibits: I-II

A digital recording of the hearing was made (1:07:48 in duration).

ISSUES

Has ArchCare at Terence Cardinal Cooke Health Care Center established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was transferred from another nursing home to the Facility on [REDACTED] 2022 to receive short-term rehabilitation services in the same location where his [REDACTED] was also receiving short-term rehabilitation services. (Recording @ 18:27; Exhibits 2, 4.)

2. The Appellant’s admitting diagnoses were: [REDACTED]
[REDACTED]
[REDACTED]. (Exhibit 4.)

3. By notice dated [REDACTED] 2022, the Facility determined to discharge the Appellant on [REDACTED] 2022 because his violation of the Facility’s smoking policy endangers the safety of others, and because his health has improved sufficiently that he no longer requires the services provided by the facility. The notice proposes to discharge the Appellant to the [REDACTED]
[REDACTED] [REDACTED] (Exhibit 1.)

4. The Appellant’s clinical record contains documentation from the Appellant’s physician that the Appellant’s needs can be met in the community, and that discharge to the shelter is appropriate. (Exhibit 3.)

5. The Appellant remains at ArchCare at Terence Cardinal Cooke Health Care Center pending the outcome of this appeal in a shared room with his [REDACTED], who also had a discharge appeal hearing on October 3, 2022.

APPLICABLE LAW

A residential health care facility (also referred to in the regulations as a nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. Public Health Law §§2801(2)-(3); 10 NYCRR § 415.2(k).

Department regulations at 10 NYCRR § 415.3(i) describe the transfer and discharge rights of residential health care facility residents. They state, 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;

(3) the safety of individuals in the facility is endangered.

The residential health care facility has the burden of proving that the discharge is necessary, and the discharge plan is appropriate. 10 NYCRR § 415.3(i)(2)(iii)(b); State Administrative Procedure Act § 306(1).

DISCUSSION

The Facility's [REDACTED], 2022 discharge notice provides two reasons for its determination: that the Appellant's violation of smoking policy endangers the safety of others, and the Appellant's health has improved so that he no longer requires services provided by the Facility. (Exhibit 1.)

At the hearing, Stevenson Andre, the Facility's Social Work Director, testified that the Appellant's request to smoke was honored by placing him on a floor with a smoking room where smokers were allowed to smoke away from patient equipment, which is located a few steps away from the Appellant's assigned room. However, Certified Nursing Assistants (CNAs) complained that they smelled cigarette smoke emanating from the Appellant's room on [REDACTED], and [REDACTED], 2022. After those incidents, Facility staff attempted to discuss the importance of smoking in designated areas. (Exhibit 2; Recording @ 17:00, 25:10.) While the Appellant may

have violated the Facility's smoking rules, the Facility has failed to establish that those violations endanger the health or safety of individuals in the facility.

Regarding the second basis for the discharge determination, the Appellant completed physical therapy on [REDACTED] 2022, after it was determined that he had reached his maximum functional potential. (Recording @ 21:45.) He is independently able to perform all activities of daily living (ADLs), and his medical needs can be addressed in an outpatient setting. (Recording @ 34:41.) The Appellant is already receiving medical care as an outpatient and can continue to do so after discharge. (Recording @ 46:02.) He is also able to manage his own medication. (Exhibit 3; Recording @ 20:30, 24:45.)

The Appellant disputed the Facility's assertion that his health has improved. He explained that he may need surgery in the future and has occasional medical needs. (Recording @ 45:03.) However, he acknowledged that he has no need for services uniquely provided in a nursing home. (Recording @ 19:30, 39:00, 41:05.) The Facility has established that the Appellant's health has improved sufficiently that he no longer requires the services provided by the facility.

Regarding discharge planning, the Facility considered several possible discharge locations before resorting to a referral for the Appellant to obtain temporary housing assistance from the [REDACTED] Department of Homeless Services (DHS). Although the Appellant's [REDACTED] received a separate hearing regarding a separate discharge notice issued by the Facility, for purposes of discharge planning, the Facility considered the Appellant and his [REDACTED] needs when attempting to formulate an appropriate discharge plan. The Appellant and his [REDACTED] have no home available to them in the community. (Recording @ 35:00.) They rejected discharge to at least

two assisted living facilities. (Recording @ 31:25.) Their refusal to live in an assisted living facility precludes a discharge to such a setting. 18 NYCRR § 494.4(d)(5).

The Appellant testified that he had no intention of remaining at the Facility but will need additional time to plan a relocation to [REDACTED]. He sought to negotiate with the Facility for a continued stay of approximately one month within which he and his [REDACTED] would obtain additional Social Security Retirement benefits and secure an arrangement with friends in [REDACTED] to stay with until the couple procures housing. The Appellant also hinted at the Facility financing the couple's travel costs. (Recording @ 39:40, 42:05, 43:10, 48:40, 50:20.)

The Appellant has not offered a reasonable, realistic alternative to the proposed discharge location. The fact remains that, even if the Appellant's expressed goal is implemented, he will be undomiciled, just in another state. He is entitled to make arrangements to relocate to another state if that plan suits him, but he is not entitled to remain in nursing home care that he does not require while he does so.

Prior to the Appellant's discharge to the DHS [REDACTED], the Facility will complete a shelter referral form that indicates the Appellant's need for temporary housing with first floor access or a building with an elevator in order to accommodate the Appellant's difficulty with stair ambulation. 18 NYCRR § 491.9(c)(5). (Recording @ 28:40.) In proposing to discharge the Appellant to the DHS [REDACTED], the Facility has considered the needs of both the Appellant and his [REDACTED]. DHS will be able to assist the couple with procuring the government identification necessary to obtain temporary housing in New York, or to effectuate a relocation to [REDACTED]. (Recording @ 29:00.) The Facility has established that its discharge plan is appropriate.

DECISION

ArchCare at Terence Cardinal Cooke Health Care Center has established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate.

Dated: October 4, 2022
Menands, New York

Natalie J. Bordeaux /ny

Natalie J. Bordeaux
Administrative Law Judge