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Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Acting Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

January 18, 2022

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,

Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM: 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 her from a residential
health care facility.

COPY

DECISION

Hearing Before:

Natalie J. Bordeaux
Administrative Law Judge

Held via:

Cisco WebEx Videoconference

Hearing Date:

January 7, 2022

Parties:

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

■■■■

Pro Se

JURISDICTION

By notice dated ██████ 2021, New Gouverneur Hospital SNF (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge ██████ (Appellant). 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: Marne Salomon, Director of Social Work
Dr. Sherry Humphrey, Chief Medical Officer
Marcia Styles, Associate Director of Nursing
Freda Morales, Social Worker
Danny Wong, Director of Rehabilitation
Dr. Polina Gilchyonok, Chief of Service

Facility exhibits: 1-5

Appellant witnesses: ██████ Appellant

Appellant exhibits: A-E

The notice of hearing, discharge notice, and the accompanying cover letter were marked as ALJ Exhibit I. A digital recording of the hearing was made (1:54:44 in duration).

ISSUES

Has New Gouverneur Hospital SNF established that its determination to discharge the Appellant was correct and that its discharge plan was appropriate?

FINDINGS OF FACT

1. The Appellant is a ██████-year-old female who was transferred from ██████ ██████ to the Facility on ██████ 2021 for short-term rehabilitation for ██████

(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;

When the facility transfers or discharges a resident because the resident's health has improved sufficiently that the resident no longer needs the services provided by the facility, the facility shall ensure that the resident's clinical record contains complete documentation made by the resident's physician and, as appropriate, the resident's interdisciplinary care team. 10 NYCRR § 415.3(i)(1)(ii)(a). The residential health care facility must prove by substantial evidence that the discharge was necessary and the discharge plan appropriate. 10 NYCRR § 415.3(i)(2)(iii)(b); State Administrative Procedure Act § 306(1).

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED], 2021 for short-term rehabilitation to [REDACTED]. (Exhibit 1.)

Although neither the primary nor secondary stated basis for her admission, the Appellant is also diagnosed with [REDACTED]

[REDACTED]. (Exhibit 1; Recording @ 52:45.) By notice dated [REDACTED] 2021, the Facility determined to discharge the Appellant, effective [REDACTED] 2021, because her health has

improved sufficiently that she no longer requires the services provided by the Facility. (Exhibit 3.)

The Appellant received physical and occupational therapy at the Facility to assist her with independent performance of activities of daily living (ADLs). She was discharged from those therapies on [REDACTED] after meeting her rehabilitation goals. The Appellant no longer requires assistance with activities of daily living and can perform all tasks independently with the use of an assistive device and with minimal supervision. (Recording @ 44:03.)

The Appellant's medical conditions are stable. (Exhibit 4.) Dr. Polina Gilchyonok, the Facility's Chief of Services, confirmed that the Appellant neither receives nor requires nursing home care. Although Facility staff dispense medication to the Appellant, and a Facility physician conducts medical evaluations at regular intervals, the Appellant does not receive any care at the Facility that she would be unable to obtain in the community. (Recording @ 43:10.)

At the hearing, the Appellant confirmed that her stay at the Facility was intended to be one of short duration. (Recording @ 1:15:00, 1:22:59.) She insisted that she strives to remain independent for as long as possible, despite the gradual worsening of her medical conditions. (Recording @ 1:05:00.) However, she contended that she requires at least one more month at a nursing home for proper [REDACTED] care and claims that she will not be eligible for coverage of such care as an outpatient. (Recording @ 1:01:30, 1:03:47, 1:15:30, 1:24:00, 1:29:33, 1:45:46.) The Appellant described proper [REDACTED] care as the [REDACTED], to be used independently or as a [REDACTED], which she repeatedly requested from Facility staff. (Recording @ 54:47, 1:28:00; Exhibits A-B.)

Dr. Sherry Humphrey, the Facility's Chief Medical Officer, concurred that treatment for the Appellant's [REDACTED] requires [REDACTED] but noted that the

Appellant's requests for [REDACTED] indicate brand preference rather than a medical need. (Recording @ 1:37:16.) Freda Morales, the Appellant's social worker at the Facility, reported that the Appellant declined offers by staff to [REDACTED] in combination with a [REDACTED] for skin protection and has therefore had [REDACTED] (Recording @ 1:35:13.) The Appellant insisted that the offered [REDACTED] and uncomfortable and [REDACTED]. (Recording @ 1:13:10, 1:41:54.)

From the date of her hospital admission through the date of this hearing, the Appellant [REDACTED], even without [REDACTED]. (Recording @ 1:40:03.) The Appellant seeks to [REDACTED] and believes that this can only be accomplished with [REDACTED] at the Facility. (Recording @ 1:02:37, 1:25:00, 1:29:58.) She stated that [REDACTED] are essential to enhancing her independence and improving her [REDACTED] which has caused [REDACTED]. (Recording @ 1:16:20, 1:27:45.)

The Appellant also explained that she is in [REDACTED] pain (Recording @ 1:26:24, 1:50:41), a statement corroborated by her admission record. (Exhibit 1.) She asserted that she was denied proper rehabilitation therapy, as therapists would visit her in her room rather than bringing her to a rehabilitation room with therapeutic equipment located on another floor of the facility. (Recording @ 1:05:25.) While the Appellant disputed the claim that she is able to independently perform ADLs including bed mobility, transfers, toilet transfers, and ambulation, she also acknowledged that she does perform these activities without help. She explained that she does so because of the inordinate wait time she endures after requesting help. (Recording @ 46:40, 48:20, 59:55, 1:27:14.)

The treatment afforded the Appellant at the Facility, including the brand of bandage for [REDACTED] and the extent of rehabilitation therapies offered, is outside the scope of this

hearing. (Recording @ 1:31:09.) The issues for review at this hearing are confined to whether the Appellant continues to require the services of a nursing home and the appropriateness of the discharge plan (discussed immediately below). The record reflects that several of the Appellant's symptoms have improved during her short-term rehabilitation stay, that her medical conditions are stable, and that she no longer requires nursing home care. The Facility has established that its determination to discharge the Appellant was correct.

With respect to the proposed discharge plan, the Facility has determined to discharge the Appellant to her address of record, an apartment located at [REDACTED], in [REDACTED] (Exhibit 3; Recording @ 49:30.) She will be transported by ambulance with medication. In addition, a rolling walker will be ordered for her, and she will be referred for a home care services evaluation. (Recording @ 50:00.)

The Appellant's actual residence is an apartment in [REDACTED]. She has refused to provide that address because she is subleasing the space from a friend. She confirmed that the [REDACTED] address identified on the discharge notice is where she would be discharged. (Recording @ 1:20:30, 1:49:10.)

Although the Appellant testified that she would prefer to be transferred to another nursing home for one month with proper [REDACTED] care, those requests were not previously made to her social workers and were therefore never considered as an alternative discharge plan. (Recording @ 1:34:06.) Marne Salomon, the Facility's Director of Social Work, explained that her department did not consider transferring the Appellant to another nursing home because she requires a lower level of care. (Recording @ 1:36:33.)

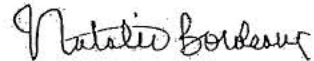
The Facility fulfilled its responsibilities toward the Appellant, a short-term rehabilitation patient. It successfully assisted the Appellant with regaining her physical independence to

effectuate a safe return to the community. The Facility was required to devise a discharge plan which addressed the Appellant's medical needs and how those needs will be met after discharge. 10 NYCRR § 415.3(i)(1)(vi). It has met this regulatory obligation. While the Appellant is entitled to pursue matters related to her treatment and the adequacy of such treatment, she is not entitled to do so while remaining at the Facility. The Facility's determination is affirmed.

DECISION

New Gouverneur Hospital SNF has established that its determination to discharge the Appellant was correct and that its discharge plan was appropriate.

Dated: January 18, 2022
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge