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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

March 11, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Silvercrest Center for Nursing
and Rehabilitation
144-45 87th Avenue
Briarwood, New York 11435

Linda B. Johnson, Esq.
10 Airline Drive, Suite 205
Albany, New York 12205

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

-----X
 In the Matter of an Appeal, pursuant to :
 10 NYCRR § 415.3, by :
 [REDACTED] :
 [REDACTED] :
 Appellant, :
 from a determination by :
 SILVERCREST CENTER FOR NUSING :
 AND REHABILITATION :
 Respondent, :
 to discharge him from a residential health :
 care facility. :
 -----X

COPY

DECISION

Hearing Before: Matthew C. Hall
 Administrative Law Judge

Held at: Via WebEx

Hearing Date: February 2, 2022

Parties: Silvercrest Center for Nursing
 And Rehabilitation
 144-45 87 Avenue
 Briarwood, NY 11435
 By: Linda B. Johnson, Esq.

[REDACTED]
 [REDACTED]
 By: Pro Se

JURISDICTION

By notice dated [REDACTED], 2021, The Silvercrest Center for Nursing and Rehabilitation (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, 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).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and attached Facility Discharge Notice

Facility Exhibits: 1 - Evidence Packet
2 - Summary of Evidence
3 - Photographs of Appellant smoking

Facility Witnesses: Maureen Peter - Director of Social Work
Ryan Spencer - Social Worker
Mohammed Syed - Director of Rehabilitation
Debbie Boebhai - Registered Nurse
Michelle Leach - Wound Care RN
Ion Oltean - Attending Physician

Appellant's Witness: Appellant testified on his own behalf

4. As of the date of this hearing, the Appellant's [REDACTED] pain had been resolved, he was able to ambulate independently with a wheelchair and could also walk for limited distances. He was completely independent in all Activities of Daily Living (ADLs) such as toileting, bathing, dressing, grooming and hygiene. He manages all his medical and personal needs and is medically stable. (Ex. 1; T. Boebhai, Leach, Oltean.)

5. The Appellant has refused the Facility's attempt to care for the wound on his [REDACTED] on at least twenty-five occasions. On several other occasions, the Appellant refused to take his recommended medications for [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Ex. 2.)

6. On at least twenty-one occasions, the Appellant left the Facility of his own accord without the assistance of, or notification to the Facility. (Ex. 1,2.)

7. Pursuant to the [REDACTED] [REDACTED] 2021 discharge notice, the Facility determined to discharge the Appellant to the [REDACTED] Adult Care Center, located at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], [REDACTED] [REDACTED] (Ex. 1.)

8. Prior to being admitted to the hospital and then transferred to the Facility, the Appellant lived in his own home. However, at the time of this hearing, his home was occupied by

renters and not available to the Appellant. (Ex. 2, T. Peter, Spencer.)

9. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending Physician, Director of Social Work, and Director of Rehabilitation, that discharge to the community, including to an adult care center, is appropriate. (Ex. 1, 2; T. Peter, Spencer, Syed, Oltean.)

10. The Appellant remains at the Facility pending the outcome of this appeal.

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. Public Health Law §§ 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 Resident's discharge is permissible pursuant to 10 NYCRR § 415(i)(1)(i)(a)(2):

transferring, and showering. By [REDACTED], 2021, however, the Appellant's abilities significantly improved, and he was and remains independent with all ADLs. He was and is able to walk limited distances by himself and is able to ambulate with the use of a wheelchair. He has no further need for rehabilitation. Further, the Appellant has been managing all his medical appointments and other personal matters on his own. (Ex. 2.) It is the opinion of the professionals from all Facility disciplines, including Dr. Oltean, the Appellant's attending physician, that the Appellant may be safely discharged from the Facility to [REDACTED] Adult Care Center. (Ex. 1,2; T. Peter, Spencer, Syed, Oltean.)

The Appellant no longer needs skilled nursing care and refuses care when it is offered to him. Accordingly, the Facility has proven that its determination to discharge the Appellant is correct.

As discussed above, prior to his stay in a hospital and his transfer to the Facility, the Appellant previously resided in a home in the community. However, that home is no longer available to the Appellant. The Facility intends to discharge the Appellant to [REDACTED] Adult Care Center. There, the Appellant's needs for wound care, medication control, and a diet prepared specifically

to address his [REDACTED] will be addressed. He will also be able to ambulate in his wheelchair.

Accordingly, the Facility has proven that its determination to discharge the Appellant to [REDACTED] Adult Care Center is appropriate.


DECISION

Silvercrest Center for Nursing and Rehabilitation has established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate.

Silvercrest Center for Nursing and Rehabilitation is authorized to discharge the Appellant in accordance with the [REDACTED] 2021, Discharge Notice.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

DATED: Albany, New York
March 11, 2022


Matthew C. Hall
Administrative Law Judge

To:

██████████
c/o Silvercrest Center for Nursing
and Rehabilitation
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Briarwood, NY 11435

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