

bcc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan
SAPA File
BOA by scan



Department of Health

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

April 4, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591

Alec Shneider, NHA
Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591

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: nm
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of an Appeal, pursuant to
10 NYCRR 415.3, by

COPY

DECISION

██████████
Appellant,

from a determination by

TARRYTOWN HALL CARE CENTER

to discharge him from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Dates: March 2, 2022

Parties: ██████████
Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591
By: Pro Se

Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591
By: Alec Shneider, NHA

JURISDICTION

By notice dated [REDACTED], 2022, Tarrytown Hall Care Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [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: I – Notice of Hearing with Transfer/Discharge Notice dated [REDACTED]/22
II – Transfer/Discharge Notice dated [REDACTED]/22
III – Transfer/Discharge Notice dated [REDACTED]/22

Facility Exhibits: 1 – Medical record documents (112 pages)
2 – MD note (1 page)

Appellant Exhibits: A – Medical records (9 pages)
B – Appellant's notes (2 pages)
C – Letter to ALJ with appointment cards (1 page)

Facility Witnesses: Kirsty Biondo, Director of Social Work
Mary Mandap, Social Worker
Alec Shneider, Nursing Home Administrator
Edward Henry, Assistant Director of Nursing

Appellant Witnesses: Appellant testified in his own behalf

5. The Appellant's medical record contains a provider note from a physician stating that the Appellant is "stable medically" and can be discharged to a shelter. (Facility Ex. 2.)

6. On [REDACTED] 2022, the Facility issued a Transfer/Discharge Notice to the Appellant which proposed discharge to [REDACTED] County Social Services on the grounds that the Appellant's health has improved sufficiently so that he no longer needs the services provided by the Facility. (ALJ Ex. II.)

7. On [REDACTED] 2022, the Appellant had a [REDACTED] altercation with a female resident. (Facility Ex. 1; T. Biondo; Mandap; Henry.)

8. On [REDACTED], 2022, the Facility issued a second Transfer/Discharge Notice to the Appellant which proposed discharge to [REDACTED] County Social Services on the grounds that the health and/or safety of other individuals in the Facility is endangered. (ALJ Ex. I.)

9. At the commencement of this hearing on March 2, 2022, the Facility indicated that it wished to proceed with the discharge of Appellant based on the grounds stated in the [REDACTED] 2022 and the [REDACTED] 2022 Transfer/Discharge Notices.

10. On [REDACTED] 2022, the Facility amended its Transfer/Discharge Notice to propose discharge to [REDACTED] County Social Services on both grounds stated in the two prior Transfer/Discharge Notices. (ALJ Ex. III.)

11. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.

12. 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 415.3(i)(1)(i)(a)(2), which states that 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. The Facility has also alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(3)&(4) because the health and/or safety of individuals in the facility is endangered.

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

The Facility first issued a Transfer/Discharge Notice to the Appellant on [REDACTED] 2022, which proposed discharge four days later on the grounds that the Appellant's health has improved sufficiently. (ALJ Ex. II; See 10 NYCRR 415.3(i)(1)(iv).) After the Appellant had a [REDACTED] altercation with another resident on [REDACTED] 2022, the Facility issued a second Transfer/Discharge Notice on [REDACTED] 2022 proposing discharge that same day on the grounds that the health and/or safety of other individuals is endangered. (ALJ Ex. I.) A hearing was then scheduled for [REDACTED] 2022. (ALJ I.) At the commencement of this hearing on [REDACTED] 2022, the Facility indicated that it wished to discharge the Appellant on the grounds stated in both the [REDACTED], 2022 and the [REDACTED] 2022 Transfer/Discharge Notices. The Facility then amended its Transfer/Discharge Notice to propose discharge to [REDACTED] County Social Services on both grounds stated in the two prior Transfer/Discharge Notices. (ALJ Ex. III.) Accordingly, both grounds for discharge are reviewed herein.

In advance of the hearing, the Facility submitted a document including the Appellant's admission record, progress notes from social services and nursing, [REDACTED] consult records, pharmacy orders, copies of prescriptions, and a discharge summary. (Facility Ex. 1.) On the date of the hearing, the Facility also submitted into evidence a medical note stating that the resident was medically stable for discharge. (Facility Ex. 2.) The Appellant submitted several documents into evidence on the date of the hearing, including hospital admission and discharge documents, radiology reports, notes made by the Appellant regarding various physicians and appointments, and a letter by the Appellant with upcoming appointments. (Appellant Exs. A-C.)

The Facility presented testimony from Kirsty Biondo, Director of Social Work, and Mary Mandap, Social Worker. Ms. Biondo testified that the Appellant is medically stable for discharge, has met his rehabilitation goals, and that all disciplines have determined that the

Appellant is safe to discharge. She testified that the Appellant was involved in a [REDACTED] altercation with a female resident on [REDACTED], 2022 in which the Appellant told the other resident "[REDACTED]". Ms. Biondo testified that the Facility has been working with the Appellant to discharge him to an assisted living facility and that plan was progressing until the Appellant refused to sign over income, making assisted living no longer an option. She also testified that the Appellant has an application pending for an apartment through a supportive housing program but that is also not an option as an apartment would not be available until sometime in [REDACTED]. Ms. Biondo stated that the Facility has ordered necessary durable medical equipment, made arrangements for his medicine for the next 30 days, set up transportation, and coordinated his discharge with the Department of Social Services.

Ms. Mandap testified as to the specific durable medical equipment that was ordered for the Appellant, including a wheelchair, shower chair and walker. She also testified that the Appellant has a history of being [REDACTED] and [REDACTED]. Ms. Mandap cited [REDACTED], [REDACTED] and [REDACTED], use of [REDACTED], and [REDACTED] as examples of the Appellant's [REDACTED] behavior.

Alec Shneider, Nursing Home Administrator, testified that that he receives complaints about the Appellant's behavior on a daily basis. He testified that the behavior includes [REDACTED] [REDACTED]. Mr. Shneider testified that the nursing home environment should be healing and that it is not with the Appellant's presence in the Facility.

Edward Henry, Assistant Director of Nursing, provided the limited testimony that he spoke with the Appellant following the [REDACTED] altercation with the female resident on [REDACTED] [REDACTED] 2022.

The Appellant testified that he is not ready for discharge. He stated that he has several medical appointments coming up and that he would not be ready to be discharged until after those appointments. He also testified that he wants to be discharged to an assisted living facility and he denied not signing over income or otherwise preventing discharge to such a location. The Appellant testified that he did not [REDACTED] a female resident and he would not [REDACTED].” The Appellant also denied that he was ever interviewed by Mr. Henry following an altercation.¹

The Facility bears the burden to prove that the discharge is necessary and appropriate. Discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2) when the resident's health has improved sufficiently so the resident no longer needs the services provided by the Facility. The record contains a cursory note from a medical doctor stating, in totality, “[REDACTED] y o male stable medically. He can be dc'd to shelter in AM.” (Facility Ex. 2.) The Appellant was admitted to the Facility for short-term rehabilitation. The Facility alleged through the testimony of Ms. Bondi, Director of Social Work, that the Appellant had met all his rehabilitation goals. This statement is also contained in the Facility documents in the context of a social services note. However, no evidence was offered by the Facility as to the Appellant's rehabilitation plan and goals, the Appellant's progress with respect thereto, and the Appellant's current functional status. The Facility did not submit any therapy records or call anyone from the rehabilitation department to testify on this issue. The evidence is insufficient to demonstrate that the Appellant's health has improved such that discharge is necessary.

¹ During the hearing, the Appellant requested that [REDACTED], a per diem RN, be produced by the Facility on the grounds that the documents submitted by the Facility stated that Mr. [REDACTED] had interviewed the Appellant after the alleged [REDACTED] altercation. Mr. [REDACTED] was not working at the Facility at the time of the hearing. The Facility credibly explained that Mr. [REDACTED] interviewed the female resident and not the Appellant. The Facility then located and produced Edward Henry as a witness, the individual that purportedly interviewed the Appellant after the altercation.

Discharge is also permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(3)&(4) when the health and/or safety of individuals in the facility is endangered. The Facility has shown that the Appellant is a difficult resident at the Facility. The Appellant has behaviors that make him unpleasant for staff and other residents. Despite the Appellant's denial, the evidence supports that the Appellant engaged in a [REDACTED] altercation with another resident in which he stated he would [REDACTED] her. While such behavior is unacceptable and must be addressed, there is no indication in the record that the Appellant put the resident in any danger. There is also no indication in the record that the Appellant's other difficult and unpleasant behaviors such as [REDACTED] [REDACTED] have endangered the health and/or safety of other individuals in the Facility. Moreover, there is no indication in the record that the Facility has exhausted all possibilities to address the Appellant's behaviors. The evidence is insufficient to demonstrate that the Appellant has endangered the health and/or safety of individuals in the Facility such that discharge is necessary.


The appropriateness of the discharge location is not addressed herein because the Facility has failed to meet its burden of proving that discharge of the Appellant is necessary.



DECISION

Tarrytown Hall Care Center has failed to meet its burden of proving that its discharge of the Appellant was necessary.

1. The Appellant's discharge appeal is granted.
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
April 1, 2022


Tina M. Champion
Administrative Law Judge

TO:  
c/o Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591

Alec Shneider, NHA
Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591