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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

August 15, 2022

CERTIFIED MAIL/RETURN RECEIPT

Marianne Kane, Director of Social Services
Morris Park Rehabilitation & Nursing Center
1235 Pelham Parkway
Bronx, New York 10469

Daniel Ross, Esq.
Mobilization for Justice
100 William Street, 6th floor
New York, New York 10038

██████████ ██████████
c/o Morris Park Rehabilitation & Nursing Center
1235 Pelham Parkway
Bronx, New York 10469

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: nm
Enclosure

STATE OF NEW YORK: DEPARTMENT OF HEALTH

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

COPY

██████████ ██████████

Appellant,

from a determination by

DECISION

MORRIS PARK REHABILITATION & NURSING CENTER

Respondent,

to discharge him from a residential health care facility

Hearing Before: Jean T. Carney
Administrative Law Judge

Held via: Cisco WebEx videoconference

Hearing Date: July 19, 2022
Record closed on August 1, 2022

Parties: Morris Park Rehabilitation & Nursing Center, Respondent

By: Marianne Kane
Director of Social Services
mkane@morris-park.com

██████████ ██████████ Appellant

By: Daniel Ross, Esq.
Mobilization for Justice
dross@mfjlegal.org

JURISDICTION

By notice dated [REDACTED], 2022, Morris Park Rehabilitation & Nursing Center (Morris Park or Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] [REDACTED] (Appellant) from the Facility on the grounds that the Appellant no longer needed the services provided by the Facility. The proposed discharge location is to [REDACTED] shelter at [REDACTED] [REDACTED]. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i).

HEARING RECORD

Facility Exhibits:

- 1 – Minimum Data Set (MDS) dated [REDACTED] 2022
- 2 – Physician notes for [REDACTED] [REDACTED] 2022
- 3 – Physician note dated [REDACTED]/2022
- 4 – Various Nursing Notes
- 5 – Supplemental Security Income denial letter
- 6 – Letter dated [REDACTED], 2022

Facility Witnesses: Marianne Kane, Director of Social Services

Appellant Exhibits:

- A – Discharge Notice dated [REDACTED]/2022
- B – MDS dated [REDACTED]/2022
- C – RN Supervisors notes
- D – DHS Application

Appellant Witness: [REDACTED] [REDACTED] Appellant

A [REDACTED] interpreter was also present. A transcript of the proceeding was made part of the record, and the record closed upon receipt of the transcript.

ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refers to the testimony of the witness ("T") at the hearing and exhibits ("Exh") found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejected in favor of the cited evidence. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2019 from [REDACTED] Hospital with relevant diagnoses of [REDACTED]
[REDACTED]
[REDACTED] Prior to his hospital stay, the Appellant had resided in various nursing homes for approximately seven years. The Appellant has no resources in the community. (Exh 2; T Appellant).
2. On [REDACTED] 2022, the Facility served a Transfer/Discharge Notice on the Appellant, asserting that the Appellant's "health has improved sufficiently so that [he] no longer need the services provided by the facility." (Exh B).
3. The Appellant often leaves the Facility during the day, taking either public transportation; or a medi-van to medical appointments as arranged by the facility. He is medically stable in that his chronic conditions are currently managed. (T Kane; Exhs 2 and C).
4. The Facility provides the Appellant with his medications set up in blister packs. The Appellant knows what pill to take by its color. Staff administers the Appellant's [REDACTED] medication when his [REDACTED] to use the [REDACTED] himself. (Exh 4; T Kane and Appellant).
5. Facility staff sets up and supervises the Appellant when he showers. Staff also trims the Appellant's nails and shaves him when [REDACTED] for him to safely shave himself, approximately three to four days a week. (T Appellant).

6. A person is medically inappropriate for shelter placement if they are unable to care for themselves and independently manage activities of Daily Living (ADLs) as set forth on the ADL assessment for Institutional Referrals. The assessment form requires a score of ■ and criteria include medication management, showering and grooming independently. (Exhibit D).

7. The Appellant was denied Supplemental Security Income from the Social Security Administration because he is not a "U.S. citizen or national or in any of the eligible alien categories." (Exh 5).

8. Except for hospitalizations, the Appellant has resided continuously in residential nursing facilities for approximately the last 10 years. Medicaid currently pays for the Appellant's stay in the facility, and has not issued any denials of coverage. (T Appellant and Kane).

APPLICABLE LAW

A residential health care facility, also referred to 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] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(1)(i)(a), a resident may only be discharged when the interdisciplinary care team determines that:

- (1) the transfer of discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;
- (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; or
- (4) the health of individuals in the facility is endangered.

Additionally, 10 NYCRR § 415(i)(1)(ii) requires that the facility ensures complete documentation in the resident's clinical record when transferring or discharging a resident under the above circumstances. The documentation shall be made by:

(a) the resident's physician and, as appropriate, interdisciplinary care team, when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; and

(b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph.

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision. (*Stoker v. Tarantino*, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3rd Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

DISCUSSION

The Facility has shown that the Appellant is medically stable, and able to navigate in the community with assistance; but has failed to show that discharge is necessary, and the discharge plan is appropriate.

This is the second attempt within six months this facility has made to discharge the Appellant. In a decision issued on January 13, 2022, it was determined that the discharge plan was not appropriate. The only change since that decision was rendered, is that the Appellant goes to his doctor for his [REDACTED] monitoring, rather than relying on nursing staff at the facility.

The facility failed to provide testimony from the Appellant's treatment team regarding his ability to manage his health needs without assistance from facility staff. The evidence shows that the Appellant is medically stable because staff ensures that he remains stable. The Appellant has only a rudimentary understanding of his medications. He is supplied blister packs, and only knows what he takes by the color of his pills. If he is discharged, a pharmacy will not provide that assistance to him, or guarantee that his medications will stay the same color as they are in the facility. The Appellant testified that he has difficulty reading and understanding instructions from his doctor. In addition, nursing staff assists the Appellant in administering his [REDACTED] at least three or four days per week. His inability to manage and administer his medication belies the facility's position that he has improved sufficiently to be discharged.


Further, the Facility has failed to show that discharge to a shelter is appropriate. Prior to discharge, the Facility must show how the Appellant's medical and physical needs will be met at the discharge location. The facility presented no evidence meeting this burden. In fact, the evidence reflects that the facility failed to submit an updated shelter system application, or make any meaningful effort to find an alternative discharge location since the last hearing. The Appellant still requires set up and supervision for several ADLs, including bathing and personal hygiene; and medication administration. The shelter still cannot provide that level of support.

The Appellant has resided in a residential nursing facility for the last nine to ten years. He testified credibly to his lack of understanding of his medical conditions, medications, and his inability to manage them on his own. The facility's stated position that it feels the Appellant does not require the level of care provided by Morris Park is not supported by the evidence presented.

DECISION

The Appellant's appeal is granted. Morris Park Rehabilitation & Nursing Center has not established that its determination to discharge the Appellant to the shelter system is necessary and appropriate.

**DATED: Albany, New York
August 15, 2022**


JEAN T. CARNEY
Administrative Law Judge

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