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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 28, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Schaffer Extended Care Center
16 Guion Place
New Rochelle, New York 10802

Lindsay Sherman, SW
Schaffer Extended Care Center
16 Guion Place
New Rochelle, New York 10802

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

[REDACTED]

Appellant,

from a determination by

Schaffer Extended Care Center

Respondent,

to discharge her from a residential
health care facility.

COPY

**DECISION
AFTER HEARING**

#DA22-5884

Hearing Before:

John Harris Terepka
Administrative Law Judge

Held at:

New York State Department of Health
by videoconference
October 27, 2022

Parties:

Schaffer Extended Care Center
16 Guion Place
New Rochelle, New York 10802
sosutton@montefiore.org
By: Lindsay Sherman, social worker

[REDACTED]
Schaffer Extended Care Center
[REDACTED]

JURISDICTION

Schaffer Extended Care Center (the Respondent), a residential health care facility (RHCF) subject to Article 28 of the Public Health Law, determined to discharge [REDACTED] (the Appellant) from care and treatment in its nursing home. The Appellant appealed the discharge determination to the New York State Department of Health pursuant to 10 NYCRR 415.3(i).

The Respondent presented documents (Exhibits 1-6) and testimony from Lindsay Sherman, social worker. The Appellant testified. The notice of hearing and [REDACTED] 2022 discharge notice are in evidence as ALJ Exhibit I. A digital recording of the hearing was made. (1h6m.)

SUMMARY OF FACTS

1. Respondent Schaffer Extended Care Center is a residential health care facility, specifically a nursing home within the meaning of PHL 2801.2, located in New Rochelle, New York.
2. Appellant [REDACTED] [REDACTED] age [REDACTED] was admitted as a resident in [REDACTED] 2019 for short term care after hospitalization, with diagnoses that included [REDACTED], [REDACTED]. (Exhibit 1.)
3. By notice dated [REDACTED], 2022, the Respondent advised the Appellant that it had determined to discharge her on [REDACTED], 2022, on the grounds that her health has improved sufficiently that she no longer needs the services provided by the facility. (Exhibit ALJ I.)
4. The Appellant is not in need of nursing home care. She is medically stable, independent with all care needs, and receives no skilled nursing services from the

Respondent. She has declined care from the facility medical team and has obtained outside physicians for medical care and medications. Her medical needs can be met on an outpatient basis. (Exhibits 3-5.)

5. The Appellant's treating physician at the facility has determined and documented in her medical record that she is not in need of nursing home care and that discharge to a shelter in the community is medically appropriate. (Exhibits 4, 5.)

6. Efforts by the Respondent to develop alternative discharge plans have included efforts to place the Appellant at a lower level of adult care, such as an assisted living facility. The Appellant has turned down or failed to pursue such placement options and has not cooperated with reasonable efforts by the Respondent to develop alternative discharge plans. (Exhibits 5, 6.)

7. The discharge notice advised the Appellant she would be discharged to the [REDACTED] Shelter at [REDACTED], which is a shelter that can provide assistance with housing and social services. The discharge plan includes medication and medical appointment referrals and transportation to the shelter as requested and needed by the Appellant.

8. The Appellant remains at Schaffer Extended Care Center pending the outcome of this hearing.

ISSUES

Has the Respondent established that the Appellant's discharge is authorized and that the discharge plan is appropriate?

APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, is a residential facility providing nursing care to sick, invalid, infirm disabled or convalescent persons who need

regular nursing services or other professional services but who do not need the services of a general hospital. PHL 2801; 10 NYCRR 415.2(k). Transfer and discharge rights of nursing home residents have been codified in Public Health Law 2803-z and set forth at 10 NYCRR 415.3(i) which provides, 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.
 - ...
 - (vi) provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility, in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and provide a discharge summary pursuant to section 415.11(d) of this Title.
 - (vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility. 10 NYCRR 415.3(h)(1)

The Respondent has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(h)(2)(iii)(b).

DISCUSSION

The evidence is uncontroverted that the Appellant is no longer in need of nursing home care and has not been in need of such care for well over a year. The Appellant does not dispute that she is able to live independently, and in fact it is her desire to live on her

own. Appropriate grounds for discharge have been established. It is the Respondent's discharge plan to which the Appellant objects.

A nursing home must permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(i)(1)(vii). The Respondent has complied with this regulation by making efforts to to develop, with the Appellant's participation, a discharge plan. The Appellant was living with a [REDACTED] before her hospitalization and placement at the nursing home in 2019, but she does not want to return to and has not asked for help from family members. She has also asked the Respondent not to contact her family about discharge planning.

The Respondent began attempting to develop discharge plans as early as 2019. These efforts included repeated attempts to secure placement in an assisted living facility. The Respondent contacted several such facilities and initiated applications, but the Appellant turned down the options the Respondent identified and failed to follow through on the applications. The Appellant testified she has been trying to find a place on her own, but offered no evidence to substantiate the extent of her efforts or of any realistic time frame for success. It was only after the Respondent attempted to develop an alternative plan, and after the Appellant refused to engage with it in efforts to find other options, that resort was had to a shelter.

The Respondent's obligation is to provide an appropriate discharge plan that meets the Appellant's needs, not necessarily the discharge plan of the Appellant's choice. The Appellant is not entitled to remain in nursing home care she does not need until she finds living arrangements that she wants. Housing assistance and resources can be made available to her at the shelter. Under these circumstances, the Respondent's plan is an

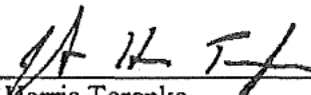
appropriate discharge plan and the Respondent is entitled to proceed with it. The Respondent has met its burden of proving that the discharge is authorized and the discharge plan is appropriate.

DECISION:

Respondent Schaffer Extended Care Center has established valid grounds for the discharge of Appellant [REDACTED] [REDACTED] and has established that its discharge plan is appropriate. The Respondent is authorized to discharge the Appellant in accordance with the [REDACTED], 2022 discharge notice.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York
October 27, 2022



John Harris Terepka
Administrative Law Judge
Bureau of Adjudication