



**Department
of Health**

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

November 23, 2022

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o The Wartburg Home
1 Wartburg Place
Mount Vernon, New York 10522

The Wartburg Home
1 Wartburg Place
Mount Vernon, New York 10522

Mara Afzali, Esq. and Gabriel Oberfield, Esq.
c/o The Wartburg Home
1 Wartburg Place
Mount Vernon, New York 10522

[REDACTED]

Denise Henry
Columbia Presbyterian Hospital
622 West 168th Street
New York, New York 10030

RE: In the Matter of [REDACTED] – 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: nm
Enclosure

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

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

The Wartburg Home,

Respondent,

to discharge Appellant from a residential health care facility.

CANCELLED

**DECISION
AFTER
HEARING**

Before: Matthew C. Hall
Administrative Law Judge

Date: November 18, 2022

Held at: Department of Health
Webex videoconference

Parties: ██████████ ██████████
c/o The Wartburg Home
1 Wartburg Place
Mount Vernon, New York 10522
By: ██████████ ██████████

The Wartburg Home
1 Wartburg Place
Mount Vernon, New York 10522
By: Mara Afzali, Esq.

Participants: Columbia Presbyterian – Columbia Campus
622 West 168th Street
New York, New York 10030
By: Denise Henry

JURISDICTION

The Wartburg Home (Facility), refused to readmit [REDACTED] [REDACTED] (Appellant) to its Facility following his hospitalization, thereby discharging the Appellant. 10 NYCRR 415.3(i). The Appellant appealed the proposed discharge pursuant to 10 NYCRR 415.3(i)(2).

RECORD

ALJ Exhibits: I – Notice of Hearing
II – Resident Face Sheet

Facility Exhibits: A – K

Appellant Exhibits: 1 – Letter from Dr. Brian Scully

Facility Witness: Bridget Zimmermann, Facility Administrator
Julia Joachim, Social Worker
Dr. Francis Polcari, Attending Physician

Appellant Witness: [REDACTED] Appellant's [REDACTED]
[REDACTED] Appellant's [REDACTED]

Hospital Witness: Denise Henry, Social Worker

The hearing was digitally recorded.

FINDINGS OF FACT

1. The Wartburg Home is a residential health care facility (Facility). (ALJ I.)
2. The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED], 2021. (ALJ II.)
3. His medical diagnoses include [REDACTED]

[REDACTED]

(Ex. H.)

4. On [REDACTED] 2022, the Appellant was transferred from the Facility to Columbia Presbyterian Hospital (Hospital) for [REDACTED]. Both the Appellant and his [REDACTED] agreed that the transfer was necessary. (T. Polcari.)
5. The Facility provided a discharge notice dated [REDACTED], 2022. The reason for discharge listed on the notice was “acute change in medical condition necessitating acute care hospitalization. (ALJ II.)
6. After treating the Appellant, the Hospital cleared the Appellant for discharge back to the nursing home. The Facility refused to readmit him. (T. Henry)
7. The Appellant remains at the Hospital pending the outcome of this hearing.

ISSUES

Has the Facility met its burden of proving that the discharge was necessary and that the 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. Public Health Law §§ 2801(2)(3); 10 NYCRR § 415.2(k).

1. Pursuant to 10 NYCRR 415.3(i)(1)(i)(a), permissible grounds for the involuntary discharge of a nursing home resident include:
 - (1) the transfer or 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;

2. Pursuant to 10 NYCRR 415.3(i)(1)(iii), before discharging a resident, a facility must

- (a) notify the resident and designated representative, if any, and, if known, family member of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner the resident and/or family member understand;
- (b) record the reasons in the resident's clinical record;
- (c) include in the notice the items described at 10 NYCRR 415.3(i)(1)(v).

3. Pursuant to 10 NYCRR 415.3(i)(1)(v), notice from the Facility of its intention to discharge a resident must include:

- (a) the reason for transfer or discharge;
- (b) the specific regulations that support, or the change in Federal or State law that requires, the action;
- (c) the effective date of transfer or discharge;
- (d) the location to which the resident will be transferred or discharged;
- (e) a statement that the resident has the right to appeal the action to the State Department of Health, which includes:
 - (1) an explanation of the individual's right to request an evidentiary hearing appealing the decision;
 - (2) the method by which an appeal may be obtained;
 - (3) in cases of an action based on a change in law, an explanation of the circumstances under which an appeal will be granted;
 - (4) an explanation that the resident may remain in the facility (except in cases of imminent danger) pending the appeal decision if the request for an appeal is made within 15 days of the date the resident received the notice of transfer/discharge;
 - (5) in cases of residents discharged/transferred due to imminent danger, a statement that the resident may return to the first available bed if he or she prevails at the hearing on appeal; and
 - (6) a statement that the resident may represent him or herself or use legal counsel, a relative, a friend, or other spokesman;
- (f) the name, address and telephone number of the State long term care ombudsman;
- (g) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for

the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act;

(h) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act; 10 NYCRR 415.3(i)(1)(v).

4. In preparation for discharge, a facility must develop a plan that “addresses the medical needs of the resident and how these needs will be met after discharge.” 10 NYCRR 415.3(i)(1)(vi).
5. A hospital is not an appropriate discharge location. DOH *DAL NH-19-07: Notice of Transfer or Discharge and Permitting Residents to Return* (August 20, 2019, Redistributed October 11, 2022).
6. The Facility has the burden of proving that the “discharge or transfer is/was necessary and the discharge plan appropriate.” 10 NYCRR 415.3(i)(2)(iii)(b).
7. Federal regulations at 42 CFR 483.15 contain substantially identical provisions to the forgoing provisions of 10 NYCRR 415.3(i).

DISCUSSION

In addition to failing to comply with the above cited notice requirements for an involuntary discharge, the Facility has failed to meet its burden of proving either that the discharge is necessary or that its discharge plan is appropriate.

The Appellant has been a resident at the Facility since [REDACTED], 2021. (ALJ I.) He was admitted to the Hospital for treatment on [REDACTED], 2022, after complaining of [REDACTED]. (T. Polcari.) He was cleared for discharge from the Hospital. The Hospital initially determined that discharge to the Appellant’s home with health care assistance was

appropriate. However, since the Appellant has been in the Hospital, he has become deconditioned and will now need the assistance of a skilled nursing facility, at least in the short term to enable him to rehabilitate to his previous condition. (T. Henry.)

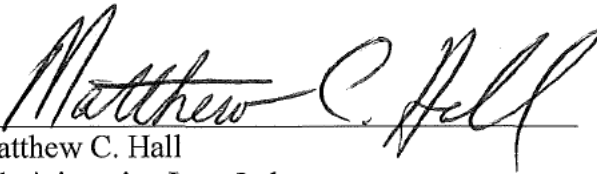
The Facility did issue a “notice of discharge.” However, the reason for discharge listed on the discharge was “acute change in medical condition necessitating acute care hospitalization.” This reason is not among the acceptable reasons to meet the regulatory requirements of 10 NYCRR 415.3(i)(1)(i)(a) and (v). At the hearing, the Facility claimed that the Appellant could not be accepted back due to interference from the Appellant’s [REDACTED]. Indeed, the Facility credibly provided a multitude of examples describing inappropriate interference by the Appellant’s [REDACTED]. Her disruptions with the Facility’s attempts to care for her [REDACTED] made it difficult, and sometimes impossible to provide care to the Appellant. At one point, the Appellant’s [REDACTED] even had to be escorted from the Facility by security as she refused to leave. (Ex. K.) The Facility, however, never issued an appropriate notice alleging these reasons as grounds for discharge as required by Department regulations. (T. Henry, Polcari, Zimmermann.)

The Facility has also failed develop a discharge plan that is appropriate for the Appellant because a transfer to a hospital is not an appropriate discharge location for a resident who still requires nursing home care but not hospitalization. 10 NYCRR 415.3(i)(2)(iii)(b); DOH *DAL NH-19-07: Notice of Transfer or Discharge and Permitting Residents to Return* (August 20, 2019, Redistributed October 11, 2022). The Facility has not identified a discharge location other than its assertion that the Appellant should not return to the Facility. Due to lack of notice alleging acceptable regulatory grounds and an appropriate discharge location pursuant to Department regulations, the Facility is required to readmit the Appellant.


ORDER

1. The Appellant's appeal is **GRANTED**.
2. The Facility is ordered to accept the Appellant to the next available semi-private bed prior to admitting any other person to the Facility, pursuant to 10 NYCRR 415.3(i)(2)(i)(d).
3. This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Laws and Rules.

Dated: November 23, 2022
Albany, New York


Matthew C. Hall
Administrative Law Judge

TO:


c/o The Wartburg Home
1 Wartburg Place
Mount Vernon, New York 10522




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