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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

March 2, 2023

CERTIFIED MAIL/RETURN RECEIPT

Deborah Bernier, Operations Manager
Terrace View Long Term Care Facility
462 Grider Street
Buffalo, New York 14215

██████████
c/o Terrace View Long Term Care Facility
462 Grider Street
Buffalo, New York 14215

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████████████████████

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: nm
Enclosure

STATE OF NEW YORK: DEPARTMENT OF HEALTH

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

██████████

Appellant,

COPY

from a determination by

DECISION

Terrace View Long Term Care Facility
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: February 23, 2023

Parties: ██████████ Appellant, *pro se*

██████████
Terrace View Long Term Care Facility, Respondent
By: Deborah Bernier, Operations Manager
dbernier@ecmc.edu

JURISDICTION

By notice dated [REDACTED] 2023, Terrace View Long Term Care Facility (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] [REDACTED] (Appellant or Resident) from the Facility on the grounds that his health has improved sufficiently so he no longer needs the services provided by the facility. 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

In support of its determination, the Facility presented documents (Exhibits 1-9) and the testimony of Deborah Bernier, Operations Manager; Julianna Lindbloom, Discharge Planner; and Mary Ellen Vogel, Resident Placement Advocate. The Appellant's [REDACTED] [REDACTED] [REDACTED] testified on his [REDACTED] behalf. The hearing was digitally recorded and made part of the record.

ISSUES

Has the Facility established that the Appellant's discharge is necessary and 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] 2021, for long term care after hospitalization for an [REDACTED] and [REDACTED]. (Exhs 1, 2 and 4; T Bernier).

2. On his admission, the Appellant was determined to not have capacity to make medical decisions. His cognition improved and capacity was restored in [REDACTED] 2022. He received occupational therapy and physical therapy, and was discharged after reaching maximum functional levels. (Exh 9; T Bernier).

3. The Appellant is medically cleared for discharge, independent in his activities of daily living (ADLs), and his cognition is intact, scoring [REDACTED] on his Brief Interview for Mental Status (BIMS) dated [REDACTED] 2023. (Exhs 4, 5, and 6).

4. The Facility began discharge planning with the Appellant in [REDACTED] 2022. Neither the Appellant's previous residence, nor his family members are available discharge resources. The Facility looked into a Single Point of Access (SPOA) referral; but the Appellant does not qualify for [REDACTED] housing because his [REDACTED] is in remission; and his mental health diagnoses of [REDACTED] and [REDACTED] are not severe enough to qualify. Discharge planning was further hampered by the Appellant's lack of income. He does not qualify for Social Security benefits because of his insufficient work history. The Appellant does not qualify for other assistive living programs due to his age. (Exh 7; T Lindbloom and Vogel).

5. The Appellant's [REDACTED] has been working with the Facility and has made efforts on his own to try and find safe housing for the Appellant to be discharged to. (T [REDACTED])

6. The Facility will make appointments with medical providers, ensure that the Appellant has medications and any adaptive equipment he needs, and establish referrals to local agencies to assist the Appellant with transportation to address his medical needs upon discharge. (T Lindbloom).

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 met its burden of showing that the discharge is necessary, and the discharge plan is appropriate. A discharge plan must “[address] the medical needs of the resident and how these will be met after discharge.” (10 NYCRR § 415.3[i][1][vi]). The evidence establishes that the Appellant’s medical needs can be met in the community, and he no longer needs the services provided in the facility. The Appellant’s medical records establish that he is independent in his ADLs and is medically cleared for discharge. The evidence demonstrates that the Appellant’s health has improved sufficiently so that he no longer needs the services provided by the facility.


The plan is to discharge the Appellant to the Department of Social Services (DSS) temporary housing unit. The Appellant does not want to go into DSS temporary housing because he believes he will not be safe. Unfortunately, the Appellant’s options are extremely limited because of his age, lack of work history, and his diagnoses. The evidence establishes that the discharge plan addresses the Appellant’s medical needs and how they will be met after discharge. The evidence also establishes that the Facility has worked with the Appellant and his [REDACTED] to explore numerous options; but discharge to the DSS temporary housing unit is the only available option.

ORDER

Terrace View Long Term Care Facility has established that its determination to discharge the Appellant is necessary, and that transfer to DSS is appropriate.

1. The Facility is authorized to discharge the Appellant on or after [REDACTED] 2023.
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: March 2, 2023
Albany, New York


JEAN T. CARNEY
Administrative Law Judge

TO: Deborah Bernier, Operations Manager
Terrace View Long Term Care Facility
462 Grider Street
Buffalo, New York 14215

[REDACTED]
c/o Terrace View Long Term Care Facility
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[REDACTED]
[REDACTED]
[REDACTED]
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