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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

May 12, 2023

CERTIFIED MAIL/RETURN RECEIPT

Marne Salomon, DSW
New Gouverneur Hospital SNF, Respondent
227 Madison Street
New York, New York 10002

██████████
C/O New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002

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,

from a determination by

DECISION

New Gouverneur Hospital SNF
Respondent,

to discharge him from a residential health care facility.

COPY

Hearing Before: Jean T. Carney
Administrative Law Judge

Held via: Cisco WebEx videoconference

Hearing Date: May 10, 2023

Parties: ██████████ Appellant, *pro se*
C/O New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002

New Gouverneur Hospital SNF, Respondent
227 Madison Street
New York, New York 10002
By: Marne Salomon, Director Social Work
Salomonm3@nychhc.org

JURISDICTION

By notice dated [REDACTED], 2023, New Gouverneur Hospital SNF (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [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 proposed discharge location is to the Department of Homeless Services (DHS) intake location. 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 A-D and F-J); and the testimony of Marne Salomon, Director of Social Work; Sherry Humphrey, M.D., Medical Director; and Danny Wong, Director of Rehab Services. The Appellant testified in his own 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], 2022, for short term care after hospitalization for an [REDACTED] after having a [REDACTED]. (Exhs A and G; T Humphrey).

2. The Appellant was discharged from physical therapy on [REDACTED] 2022, and is independent in his activities of daily living (ADLs). The Appellant was observed walking around his room during the hearing, and while he cannot run or jump yet, he can pedal a bicycle. (Exhs F and J; T [REDACTED])

3. The Appellant is medically cleared for discharge. He is able to navigate in the community, can self-administer his medications, and attends medical appointments with an [REDACTED] surgeon in the community. The Appellant is alert and scored [REDACTED] out of 15 on his Brief Interview for Mental Status (BIMS). (Exhs B, F and G; T Humphrey).

4. The Facility began discharge planning with the Appellant in [REDACTED] 2022. Initially, the plan was to discharge the Appellant to his prior residence; but that location became unavailable. The Facility made referrals to assisted living facilities; but he was not accepted. The Facility made a referral to the DHS, and the Appellant was found appropriate for the shelter. (Exhs D and I; T [REDACTED])

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 record establishes that he is independent in his ADLs and is medically cleared for discharge. The Appellant testified to his ability to walk and ride a bike; that he leaves the facility almost every day to take care of his [REDACTED] and [REDACTED]. The evidence demonstrates that the Appellant's health has improved sufficiently so that he no longer needs the services provided by the facility.


The Facility plans to discharge the Appellant to the DHS intake location at [REDACTED], New York. The Appellant argues that the shelter system is not appropriate because he is still in pain, and he would not be able to navigate the shelter. 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 explore other options; but discharge to the shelter system is the only available option.

ORDER


New Gouverneur Hospital SNF has established that its determination to discharge the Appellant is necessary, and that the discharge location 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: May 15, 2023
Albany, New York


JEAN T. CARNEY
Administrative Law Judge

TO: Marne Salomon, DSW
New Gouverneur Hospital SNF, Respondent
227 Madison Street
New York, New York 10002


C/O New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002