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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

June 2, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o The Grand Rehabilitation and Nursing
at Great Neck
15 St. Paul's Place
Great Neck, New York 11021

Daniel Mozorosky, NHA
The Grand Rehabilitation and Nursing
at Great Neck
15 St. Paul's Place
Great Neck, New York 11021

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 Levy

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

THE GRAND REHABILITATION AND
NURSING AT GREAT NECK

Respondent,

to discharge him from a residential health
care facility.

COPY

DECISION

Hearing Before:

Matthew C. Hall
Administrative Law Judge

Held at:

Via WebEx

Hearing Date:

May 17, 2023

Parties:

The Grand Rehabilitation
And Nursing at Great Neck
15 St. Paul's Place
Great Neck, NY 11021
By: Daniel Mozorosky

[REDACTED]

By: Pro Se

JURISDICTION

By notice dated [REDACTED] [REDACTED] 2023, The Grand Rehabilitation and Nursing at Great Neck (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and Discharge Notice

Facility Exhibits: 1 - CRU Summary Report
2 - Face Sheet
3 - BIMS
4 - Note from Attending Physician

Facility Witnesses: Daniel Mozorosky - Administrator
Christine Wolf - Director of Nursing
Jumi Kim - Director of Rehabilitation
Esther Koenig - Director of Social Work

Appellant's Exhibits: None

Appellant's Witness: Appellant testified on his own behalf

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 refer to testimony (T.) of witnesses and exhibits (Ex.) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant is a [REDACTED]-year-old man who was admitted to the Facility on [REDACTED] 2022. (Ex. 1.)

2. He was originally admitted for short term care for symptoms resulting from a [REDACTED] [REDACTED] [REDACTED] [REDACTED], [REDACTED], and aftercare following surgery for a [REDACTED]. (Ex. 1.)

3. The resident is alert and oriented with a BIMS score of [REDACTED]/15. (Ex. 3.)

4. Upon entry to the facility, the Appellant required rehabilitation and assistance with all Activities of Daily Living (ADLs). As of the date of this hearing, the Appellant has made significant improvement and is fully proficient in all of his ADLS.

He is fully independent and regularly refuses meals and assistance from the Facility's staff. He leaves the Facility alone on a daily basis. He manages all his medical and personal needs and is medically stable. (Ex. 4; T. Mozorosky, Wolf, Koenig, Kim.)

5. Pursuant to the [REDACTED] 2023, discharge notice, the Facility determined to discharge the Appellant to the [REDACTED] Shelter, located at [REDACTED] New York, [REDACTED] (ALJ I.)

6. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending Physician, Director of Nursing, Director of Social Work, and Director of Rehabilitation, that discharge to the community, including to an intake shelter, is appropriate. (Ex. 4; T. Mozorosky, Wolf, Koenig, Kim.)

7. The Appellant remains at the Facility pending the outcome of this appeal.

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).

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR 415.3[i][1]).

The Facility alleged that the Resident's discharge is permissible pursuant to 10 NYCRR § 415(i)(1)(i)(a)(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.

Under the hearing procedures at Title 10 NYCRR §415.3(i)(2)(iii), the Facility bears the burden to prove a discharge necessary and appropriate. Under the New York State Administrative Procedures Act (SAPA) § 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. 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.

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] 2022, for care following surgery for a [REDACTED] [REDACTED]. He also subsequently [REDACTED] and needed rehabilitation for that.

At the time of his admission to the Facility, the Appellant required assistance with all ADLs, including ambulating, transferring, and showering. By [REDACTED] [REDACTED] 2023, however, the Appellant's abilities significantly improved, and he was independent with all ADLs. He is able to walk extended distances by himself without the aid of assistive devices. He has no further need for rehabilitation. In the recent weeks, the Appellant "didn't want to be bothered with PT assessments. He refused every single attempt to assist him." (T. Kim.) The Appellant has also been managing all his medical appointments and other personal matters on his own. (Ex. 4.)

The Appellant opposes his discharge from the Facility. He was unable, however, to provide an adequate explanation for his desire to remain in a skilled nursing facility other than that he just needs "more time." (Ex. 4; T. Hibbler.)

It is the opinion of the professionals from all Facility disciplines, including Dr. Batash, the Appellant's attending

physician, that the Appellant may be safely discharged from the Facility to the [REDACTED] Shelter (Ex. 4; T. Mozorosky, Wolf, Koenig, Kim.)

The Appellant no longer needs skilled nursing care and refuses care when it is offered to him. Accordingly, the Facility has proven that its determination to discharge the Appellant is correct.

Prior to his stay at the Facility, the Appellant resided with family members in the community. However, the Appellant alleges that that residence is no longer available to him. Although the Appellant is too young to be placed in an Assisted Living Facility, The Facility has made efforts to assist him in the search for other appropriate living arrangements. The Appellant, however, has been unwilling to cooperate with the Facility in its efforts to find him such a living situation. "He didn't want to discuss placement. He doesn't let me in the room to discuss placement." (T. Koenig.) Therefore, the Facility intends to discharge the Appellant to the [REDACTED] Shelter in New York.

Accordingly, the Facility has proven that its determination to discharge the Appellant to Adult Care Center is appropriate.

DECISION

The Grand Rehabilitation and Nursing at Great Neck has established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate.

The Grand Rehabilitation and Nursing at Great Neck is authorized to discharge the Appellant in accordance with the [REDACTED], 2023, Discharge Notice.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

DATED: Albany, New York
June 2, 2023

Matthew C. Hall / cmj
Matthew C. Hall
Administrative Law Judge

To: [REDACTED]
c/o The Grand Rehabilitation
and Nursing at Great Neck
15 St. Paul's Place
Great Neck, NY 11021

Mr. Daniel Mozorosky
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