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Department of Health

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

August 7, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Apex Rehabilitation and Healthcare
78 Birchwood Drive
Huntington, New York 11746

Annmarie Karazia, Director of Social Work
Apex Rehabilitation and Healthcare
78 Birchwood Drive
Huntington, New York 11746

Elizabeth Maxim
Volunteer Coordinator, Family Service League, Inc.
emaxim@fsl-li.org

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

COPY

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

██████████

DECISION

DA23-6084

Appellant,

from a determination by

APEX REHABILITATION AND HEALTHCARE

to discharge her from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Date: July 27, 2023

Parties: ██████████
c/o Apex Rehabilitation and Healthcare
78 Birchwood Drive
Huntington, New York 11746
By: Pro Se¹

Apex Rehabilitation and Healthcare
78 Birchwood Drive
Huntington, New York 11746
By: Annmarie Karazia, Director of Social Work

¹ Ombudsman Cindy Grimm appeared with the Appellant during the hearing.

JURISDICTION

By notice dated [REDACTED], 2023, Apex Rehabilitation and Healthcare (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), 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).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. A digital recording was made of the proceeding.

HEARING RECORD

- ALJ Exhibit: I – Letter with Notice of Hearing and Notice of Discharge or Transfer
- Facility Exhibits: 1 – Progress Notes, [REDACTED] 23, 12 pages
2 – Progress Notes, [REDACTED] /23, 17 pages
3 – Progress Notes, [REDACTED] 23, 12 pages
- Appellant Exhibits: None
- Facility Witnesses: Annmarie Karazia, Director of Social Work
Gino Iovino, Director of Nursing
Shelisha Roach, Family Nurse Practitioner
- Appellant Witnesses: None

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2022, for short-term rehabilitation. (Testimony [T.] Karazia.)
2. The Appellant had a [REDACTED] upon admission. She received [REDACTED] [REDACTED] [REDACTED] ([REDACTED]) treatment that was discontinued on [REDACTED] 2022. The Appellant also received physical therapy (PT) and occupation therapy (OT) while at the Facility and was discharged from both therapies in [REDACTED] 2022. (T. Karazia.)
3. The Appellant is fully independent with all her activities of daily living (ADL). She independently leaves the Facility daily on pass. (T. Karazia, Iovino, Roach.)
4. The Appellant takes oral and inhaled medications for various conditions, and she is capable of managing her own medications. (T. Iovino, Roach.)
5. The Appellant has no skilled nursing needs and all of her medical and functional needs can be safely managed in the community. (T. Iovino, Roach.)
6. On [REDACTED], 2023, the Facility issued a Notice of Discharge or Transfer to the Appellant which proposed discharge to the [REDACTED] of Social Services in [REDACTED] [REDACTED]. (ALJ Ex. I.)
7. The Notice of Discharge or Transfer states that the Appellant will be transferred because the Appellant's health has improved sufficiently such that the Appellant no longer requires the services of the facility. (ALJ Ex. I.)
8. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.
9. The Appellant has remained at the Facility during the pendency of the appeal.

ISSUES

Has the Facility established that its determination to discharge the Appellant is correct and that its 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. (PHL § 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 Appellant's discharge is permissible pursuant to 10 NYCRR 415(i)(1)(i)(a)(2), which states:

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.

A Facility must ensure complete documentation in the resident's clinical record when a resident is discharged. (10 NYCRR 415.3[i][1][ii].)

Facilities are required to provide written notice of transfer or discharge that includes the following:

- (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].)

Facilities are also required to "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."

(10 NYCRR 415.3[i][1][vi].)

Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate.

DISCUSSION

The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2022. She received wound care, PT and OT during her stay. The Appellant's [REDACTED] treatment was discontinued on [REDACTED] 2022 and her PT and OT was discontinued in [REDACTED] 2022. Annmarie Karazia, Director of Social Work; Gina Iovino, Director of Nursing; and Shelisha Roach, Family Nurse Practitioner, each testified that the Appellant is independent in all her ADLs, can independently manage her needs, and does not need skilled nursing. They all also testified that the Appellant is capable of managing her medications and that all her needs can be appropriately met in the community. Ms. Karazia and Ms. Roach testified that the Appellant routinely leaves the Facility on pass independently, sometimes twice a day and/or for a significant amount of time.

Ms. Karazia testified that prior to identifying the [REDACTED] of Social Services as the proposed discharge location, she located both a family-type residence and an assisted living facility in the community that could accommodate the Appellant. The family-type residence is low-rent housing through a state-run program in which five to six individuals have their own room, share common areas and partake in group meals. The assisted living facility, [REDACTED], was also willing to accept the Appellant despite her relatively young age. Ms. Karazia testified that the Appellant rejected both the family-type residence and the assisted living facility.

The Appellant testified that she should not be discharged from the facility and that a shelter is not appropriate for her. She stated that she is not ready for discharge because she has [REDACTED] and [REDACTED] pain, both of which will require surgery in the future. She also stated that the skin on her [REDACTED] where her wound was located looks [REDACTED] and [REDACTED] but she acknowledged that it does not need care. The Appellant testified that she wants to remain at the Facility until she is

approved for Section 8 housing. She gave no substantive reason why she should not be discharged or why her needs cannot be safely met in the community at this point in time.

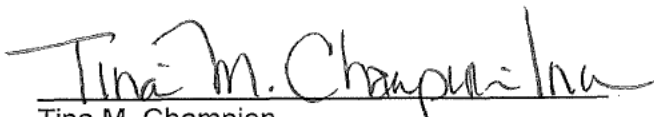
The evidence supports that the Appellant's health has improved sufficiently such that she no longer needs the services of a skilled nursing facility. The Appellant has completed her [REDACTED] care, PT and OT. Her medical needs can be met in the community. A shelter placement, although not ideal, is an appropriate discharge location. The Appellant is encouraged to reconsider the family-type residence and assisted living options if they are still available.

DECISION

Apex Rehabilitation and Healthcare has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Apex Rehabilitation and Healthcare is authorized to discharge the Appellant in accordance with its [REDACTED], 2023 Notice of Discharge or Transfer.
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: Menands, New York
August 7, 2023


Tina M. Champion
Administrative Law Judge

TO:

[REDACTED]
c/o Apex Rehabilitation and Healthcare
78 Birchwood Drive
Huntington, New York 11746
[REDACTED]

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