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Department of Health

KATHY HOCHUL
Governor

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

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

September 19, 2023

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Charles T. Sitrin Health Care Center
2050 Tilden Avenue
New Hartford, New York 13413

Christa Serafin, CEO
Charles T. Sitrin Health Care Center
2050 Tilden Avenue
New Hartford, New York 13413

[REDACTED]

[REDACTED]
(BY EMAIL ONLY)

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: cmg
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

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



Appellant,

from a determination by

Charles T. Sitrin Health Care Center

Respondent,

to discharge him from a residential
health care facility.

**DECISION
AFTER
HEARING**

Docket # 6119

Hearing before:

Kathleen Dix
Administrative Law Judge
September 5, 2023
By WebEx Videoconference

Parties:

Charles T. Sitrin Health Care Center
250 Tilden Avenue
New Hartford, New York 13413

By: Christa Serafin, CEO

By:



JURISDICTION

By notice dated [REDACTED] 2023, Charles T. Sitrin Health Care Center (Facility), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge / transfer [REDACTED] (the Appellant) from care and treatment in its Facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) Section 415.3(i).

The hearing was held on September 5, 2023, 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); via Webex videoconference. The Appellant was present for most of the hearing, while his [REDACTED] who requested the hearing, and his [REDACTED] both appeared on his behalf and were present for the entirety of the hearing. Evidence was received and witnesses were examined. A digital recording of the hearing was made. (3h 32 m.)

HEARING RECORD

ALJ Exhibit:

- I. Notice of Hearing and Notice of Discharge or Transfer (5 pages).

Facility's Exhibits:

1. Patient Review Instrument (5 pages).
2. Physician Progress Notes (3 pages).
3. Nursing Progress Notes (21 pages).
4. Treatment Plan (24 pages).
5. Occupational Therapy Progress notes, evaluation and treatment plan (12 pages).
6. ADL log and report for the period [REDACTED] 23 [REDACTED] /23 (32 pages).
7. [REDACTED] Pre-Admission and Functional Evaluation dated [REDACTED] 2023 (12 pages).
8. Admission Record (2 pages).

Appellant's Exhibit:

- A. Nursing Home Complaint Form and Transfer / Discharge Notice (6 Pages).

Facility's Witnesses:

1. Christa Serafin, CEO
2. Candace Carcone, RN and Unit Manager
3. Patrick Stedman, Director of Social Services
4. David Wallace, Vice President of Assisted Living Services

Appellant's Witnesses:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

ISSUES

Has the Facility established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACTS

1. Respondent Charles T. Sitrin Health Care Center is a residential health care facility, specifically a nursing home within the meaning of PHL § 2801.2 and 10 NYCRR 415.2(k), located in New Hartford, New York.

2. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2021 with a primary diagnosis of "[REDACTED]". [REDACTED] His [REDACTED] [REDACTED] is designated as a responsible party (Exhibit 8).

3. By notice dated [REDACTED] 2023, the Respondent advised the Appellant of its determination to discharge him on [REDACTED] 2023, on the grounds that his health has improved sufficiently that he no longer needs the services provided by the facility (ALJ Exhibit I).

4. The discharge notice advised the Appellant he would be discharged to [REDACTED] an assisted living facility on the Facility's campus, which has evaluated and accepted the Appellant (ALJ Exhibit I).

5. The Patient Review Instrument (PRI) (Exhibit 1) lists the Appellant's primary problem, *i.e.*, "[t]he medical condition requiring the largest amount of nursing time", as IDM code [REDACTED].

6. The Appellant's cognition is assessed on a quarterly basis, at a minimum, using the Brief Interview for Mental Status (BIMS), which is an orientation test (T. Stedman 2:35-2:36). The Appellant has steadily declined in his performance on the BIMS since his admission and is currently assessed as [REDACTED] impaired for cognition (T. Stedman 2:36).

7. The Appellant is unable to independently dress both his upper and lower extremities, needing "extensive assistance" with his lower body dressing (T. Carcone 19:24-19:51) mainly for his incontinence care (T. Carcone 19:56).

8. The Appellant sometimes declines to get dressed (T. Carcone 24:34, 24:39, 26:11).

9. The Appellant uses a wheelchair to ambulate and will wheel himself down the hallway independently (T. Carcone 20:59). Occasionally the Appellant will ambulate down the hallway with his rollator walker (T. Carcone 27:24) while an aide follows him with a wheelchair (T. Carcone 27:39).

10. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.

11. The Appellant remains at the Facility pending the outcome of this hearing.

APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, is a residential facility providing nursing care to sick, invalid, infirm, disabled or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital. PHL § 2801; 10 NYCRR 415.2(k). Transfer and discharge rights of nursing home residents have been codified in PHL § 2803-z and set forth at 10 NYCRR 415.3(i) which provides, in pertinent part, that the facility shall:

(1) (i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility:

(a) the resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that:

...

(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.

...

(vi) 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, and provide a discharge summary pursuant to section 415.11(d) of this Title.

When alleging that a 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, the necessity of the transfer or discharge must be documented in the resident's medical record by the resident's physician. 10 NYCRR 415.3(i)(l)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(A).

The Respondent has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

Grounds for Discharge

The Facility asserts that the Appellant's health has improved so that he no longer requires skilled nursing services (ALJ Exhibit I and Facility Exhibit 1). The Appellant, a [REDACTED]-year-old man, was admitted to the Facility on [REDACTED], 2021, with a primary diagnosis of "[REDACTED]" and additional diagnoses (Exhibit 8). The PRI lists the Appellant's primary problem as IDM code [REDACTED] [REDACTED] [REDACTED] (Exhibit 1).

Before the Facility seeks to discharge the Appellant, the necessity of the transfer or discharge must be documented in the resident's medical record by the resident's physician. 10 NYCRR 415.3(i)(l)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(A). There is no medical evidence in the record from the Appellant's treating physician supporting the Facility's decision to seek discharge of the Appellant. Progress notes from the Appellant's physician, Dr. Chase, do not contain any reason for the Appellant's discharge (Exhibit 2). In addition, Dr. Chase's note from [REDACTED], 2023, was made more than six (6) weeks *after* the discharge notice and does not indicate that the Appellant's condition has improved. Thus, the Facility has failed to meet its regulatory obligation to ensure the documentation in the medical record is complete and that the Appellant's physician documents the reasons for discharge. 10 NYCRR 415.3(i)(l)(ii)(a) and (iii)(b).

Patrick Stedman, the Facility's Director of Social Services testified that the Appellant's cognition is assessed on a quarterly basis using BIMS, that the Appellant is currently [REDACTED] cognitively impaired, and the Appellant's cognition has steadily declined since his admission (T. Stedman 2:35-2:36). Thus, as to the Appellant's primary diagnosis upon his admission at the Facility, the Appellant has not improved but has declined.

The evidence also establishes that the Appellant is unable to independently dress both his upper and lower extremities, needing "extensive assistance" with his lower body dressing (T. Carcone 19:24-19:51). The Appellant is incontinent and requires "extensive assistance" with his lower body dressing mainly for his incontinent care (T. Carcone 19:56). The Appellant predominantly uses a wheelchair to ambulate (T. Carcone 19:24, 19:51, 19:56, 20:59).

The Facility has failed to establish that the Appellant's discharge was necessary.

Discharge Plan

The Facility determined that the Appellant's current PRI (Patient Review Instrument) score of [REDACTED] is such that the Appellant does not require skilled nursing care (ALJ Exhibit I and Facility Exhibit 1). The discharge notice advised the Appellant he

would be discharged to [REDACTED], an assisted living facility, which has evaluated and accepted the Appellant (ALJ Exhibit I ; Exhibit 7).

The Appellant, through his [REDACTED] objected to the discharge because he does not believe that the PRI score of [REDACTED] truly represents the Appellant's physical and mental faculties; that he and family members have seen the Appellant's health and strength continually decline while being at the Facility, which they attribute to the Appellant's age; that they have witnessed the Appellant on two tours of the assisted living facility that is proposed for the Appellant's discharge and believe it is not a safe environment for the Appellant; that the Appellant would not be able to transport himself to the dining room even once a day due to lack of strength and distance of travel, nor order off of a menu due to poor eyesight; would not be able to vacate the premises unassisted in case of an emergency; and believe that the Appellant needs to remain in his current environment which is familiar and safe (Exhibit A).

The Appellant visited the assisted living facility on two occasions, once in 2021 (T. Wallace; T. R. [REDACTED] 1:26) and once in 2023 (T. Wallace; T. R. [REDACTED] 1:44). On both visits to the assisted living facility, the Appellant had difficulty [REDACTED] e apartment and to the facility itself (Exhibit 7, T R. [REDACTED] 1:28, 1:45). The Appellant was unable to self-ambulate any long distance on the 2021 visit (Exhibit 7) and was unable to self-ambulate to the cafeteria on the 2023 visit (Exhibit A, T R. [REDACTED] 1:28, 1:45). The Appellant had difficulty turning his wheelchair around and wheeling on the carpet of the apartment on both of his visits (Exhibit 7, T R. [REDACTED] 1:28, 1:47).

The Appellant has a documented history of falls at the Facility (T. R. [REDACTED] 2:21, 2:23; T. C. [REDACTED] 2:23; T. Serafin 2:24). The assisted living facility's evaluation of the Appellant notes that he is at a [REDACTED] risk for falls and denies that the Appellant has a history of falls (Exhibit 7).

Further, while Dr. Chase commented after the fact ["I understand that [the Appellant] may be going to assisted living"]; and though Dr. Chase states that the Appellant's "chronic underlying disease processes ... do not pose a significant risk to residing in assisted living", Dr. Chase is not giving an opinion on the appropriateness of

a discharge to assisted living ["I cannot speak to the rules and regulations of assisted living"] (Exhibit 2).

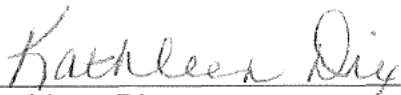
Although it is found herein that the Appellant cannot be discharged because the Facility has failed to meet the regulatory requirements for the Appellant's discharge, it is further found that that the discharge plan to [REDACTED] proposed by the Facility is inappropriate. The Appellant does not exhibit the independence necessary for assisted living and thus, the Respondent has not developed an appropriate post-discharge plan of care for the Appellant that addresses his long-term care and medical needs and how they will be met after discharge, as required by 10 NYCRR 415.3(i)(1)(vi).

DECISION

Charles T. Sitrin Health Care Center has not established that the discharge of the Appellant was necessary and that the discharge plan was appropriate.

1. Charles T. Sitrin Health Care Center is not authorized to discharge the Appellant pursuant to the Notice of Discharge dated [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: Menands, New York
September 19, 2023



Kathleen Dix
Administrative Law Judge

To: Christa Serafin, CEO
Charles T. Sitrin Health Care Center
2050 Tilden Avenue
New Hartford, NY 13413

[REDACTED]

[REDACTED] (via email only)