

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan
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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

December 29, 2023

CERTIFIED MAIL/RETURN RECEIPT

■■■■■
c/o Sutton Park Center for Nursing
and Rehabilitation
31 Lockwood Avenue
New Rochelle, New York 10801

Leila Xhudo, NHA
Sutton Park Center for Nursing
and Rehabilitation
31 Lockwood Avenue
New Rochelle, New York 10801

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: cmg
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

Sutton Park Center for Nursing and Rehabilitation,

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

Docket # 6237

Hearing before: Kathleen Dix
Administrative Law Judge
December 29, 2023
By WebEx Videoconference

Parties: Sutton Park Center for Nursing and Rehabilitation
By: Leila Xhudo, Nursing Home Administrator
31 Lockwood Ave
New Rochelle, NY 10801

■■■■■■■■■■
c/o Sutton Park Center for Nursing and Rehabilitation
31 Lockwood Ave
New Rochelle, NY 10801

JURISDICTION

By notice dated [REDACTED], 2023, Sutton Park Center for Nursing and Rehabilitation, (Facility), a residential health care facility subject to Article 28 of the PHL, determined to discharge / transfer [REDACTED] [REDACTED] (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 December 29, 2023, in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); and the New York State Administrative Procedure Act (SAPA); via Webex videoconference. (4h 22m.) Evidence was received and witnesses were examined. A digital recording of the hearing was made.

HEARING RECORD

ALJ Exhibits:

- I. Notice of Hearing
- II. Facility Documents Collectively marked (13 pages in total)
 - Facility Discharge Statement
 - Physicians Order for Personal Care/Consumer directed Personal Assistance Services
 - Resident insurance information
 - Section C – Cognitive Patters (1 page, part of MDS 3.0)
 - Physical Therapy Discharge Summary
 - Notice of Discharge
 - Progress Note dated [REDACTED]/2023

Facility's Exhibits:

1. Physical Therapy and Occupational Therapy Treatment Notes (66 pages)

Appellant's Exhibit:

None.

Facility's Witnesses:

1. Annetta Grey, MSW, Director of Social Services
2. Mark Orido, Director of Rehabilitation
3. Latoya Pearce-Kyer, Nurse Unit Manager-Rehabilitation Floor

Appellant's Witnesses:

1. [REDACTED] Appellant

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 Sutton Park Center for Nursing and Rehabilitation 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 Rochelle, New York.

2. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2023, for subacute rehabilitation following acute hospitalization following a fall. The Appellant was admitted to the Facility with diagnoses including [REDACTED]
[REDACTED].

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 his residence in [REDACTED] N.Y. (ALJ Exhibit I.)

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

6. 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)(1)(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

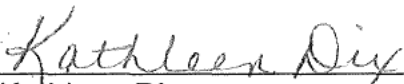
At the hearing, the Facility presented no medical documentation from a physician attesting to the necessity of the Appellant's discharge. The documentation provided by the facility includes a nurse practitioner note, dated [REDACTED] 2023 - one day after the purported date of discharge of [REDACTED] 2023 - which documentation is wholly insufficient to support the Appellant's discharge. (ALJ Exhibit II.) After discussion on the record of the

inadequacy of the nurse practitioner's note to support the Appellant's discharge, the Facility withdrew the Notice of Discharge.

ORDER

1. The Facility is not authorized to discharge the Appellant based upon the [REDACTED] 2023 discharge notice.
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
December 29, 2023



Kathleen Dix
Administrative Law Judge

To: Sutton Park Center for Nursing and Rehabilitation
Leila Xhudo, Nursing Home Administrator
31 Lockwood Ave
New Rochelle, NY 10801

[REDACTED]
c/o Sutton Park Center for Nursing and Rehabilitation
31 Lockwood Ave
New Rochelle, NY 10801