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**Department
of Health**

KATHY HOCHUL
Governor

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

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

February 6, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Bronxcare Special Care Center
1265 Fulton Avenue
Bronx, New York 10456

Darrell Sokol
Bronxcare Special Care Center
1265 Fulton Avenue
Bronx, New York 10456

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

BRONXCARE SPECIAL
CARE CENTER

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:

January 31, 2024

Parties:

Bronxcare Special
Care Center
1265 Fulton Avenue
Bronx, New York 10456
By: Darrel Sokol, NH Administrator

██████████
By: Pro Se

JURISDICTION

By notice dated [REDACTED] [REDACTED], 2023, Bronxcare Special Care Center (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] [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
II - Discharge Notice

Facility Exhibits: 1 - Resident Face Sheet
2 - Brief Interview for Mental Status (BIMS)
3 - MD's Progress Notes
4 - Progress Summary

Facility Witnesses: Emily Estevez Lopez - Licensed Social Worker
Paula Rosario - Licensed Social Worker
Dr. Umma Salma Sultana - Attending Physician
Richard Appiah - Registered Nurse
Russell Hinkson - Substance Abuse Specialist

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

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

2. The Appellant was originally admitted for care with diagnoses including [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Ex. 1.)

3. The Appellant is alert and oriented with a BIMS score of [REDACTED]/15. (Ex. 2.)

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 receives no rehabilitation services from the Facility's staff. He is able to manage all his medical and personal needs and is medically stable. (Ex. 3; T. Sultana, Appiah.)

5. Each week, on Tuesdays and Thursdays, the Appellant is provided with a standard unescorted pass to attend outside physical

and occupational therapy. He arranges his own appointments and transportation. (Ex. 4.)

6. The [REDACTED] [REDACTED] 2023, discharge notice advised the Appellant that the Facility intended to discharge him on the grounds that he no longer needed the services provided by the Facility. (ALJ I., ALJ II.)

7. The discharge notice advised the Appellant that the Facility intended to discharge him to his apartment, located at [REDACTED] [REDACTED] [REDACTED]. (ALJ I., ALJ II.)

8. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending Physician, Registered Nurse, and Social Workers, that discharge to the community, including to his apartment, is appropriate. (T. Sultana, Appiah, Lopez, Rosario.)

9. 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 at 10 NYCRR 415.3[i].

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.

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] 2022, for care with diagnoses including [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Ex. 1.)

The Appellant was admitted for a short-term rehabilitation stay to address his medical issues and once cleared by the medical and physical therapy professionals, he was expected to return to his apartment with services in place. At the time of his admission

to the Facility, the Appellant required assistance with ADLs, including ambulating and transferring. As of the date of this hearing, however, his abilities have significantly improved, and he is 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. The Appellant admits that he no longer needs nursing home care. (T. Appellant, Sultana, Appiah.)

It is the opinion of the professionals from all Facility disciplines, including the Appellant's attending physician, that the Appellant may be safely discharged from the Facility to his own home. (Ex. 3.; T. Sultana, Appiah, Lopez, Rosario)

The Appellant does not deny that he no longer needs nursing home care. He would prefer, however, to transfer to another apartment prior to his discharge and has been seeking the assistance of the [REDACTED] [REDACTED], which is assisting him with respect to housing vouchers and transfers. The Facility takes the position that the Appellant's home is appropriate, however, and that discharge to his home is safe and acceptable. The Facility's position is accepted.

Nonetheless, the Facility has been working with the Appellant to find an alternative to his current home living situation that aligns more favorably with his preferences. The Appellant

testified that he needs "about a month" to finalize a transfer out of his current home living situation and the Facility was amenable to granting the Appellant additional time to do so. (T. Appellant, Sokol.)

The Facility has proven that its determination to discharge the Appellant is correct and that the discharge plan is appropriate. However, the Appellant will be given some additional time to find a preferable living situation.

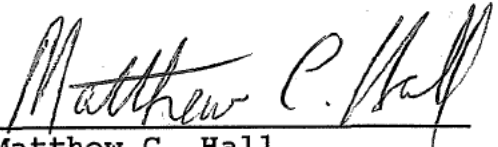
DECISION

The Facility has established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate.

The Facility is authorized to discharge the Appellant in accordance with the [REDACTED] 2023, Discharge Notice. However, the discharge date is extended to [REDACTED] 2024.

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
February 6, 2023


Matthew C. Hall
Administrative Law Judge

To: Mr. [REDACTED] [REDACTED]
c/o Bronxcare Special Care Center
1265 Fulton Avenue
Bronx, NY 10456

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