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Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Acting Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

January 14, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o The Grand at Pawling
9 Reservoir Road
Pawling, New York 12564

Sam Raitport, NHA
The Grand at Pawling
9 Reservoir Road
Pawling, New York 12564

Barbara Phair, Esq.
Abrams Fensterman, LLP
3 Dakota Drive, Suite 300
Lake Success, New York 11042

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,

Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM: 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

The Grand at Pawling,
Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION

Hearing Before: John Harris Terepka
Administrative Law Judge

Hearing dates: January 11 & 14, 2022
By videoconference

Parties: The Grand at Pawling
9 Reservoir Road
Pawling, New York 12564
sraitport@thegrandhealthcare.com
By: Barbara Stegun Phair, Esq.
Abrams Fensterman, LLP
3 Dakota Drive
Lake Success, New York 11042
BPhair@Abramslaw.com

██████████ *pro se*
The Grand at Pawling
██████████

JURISDICTION

The Grand at Pawling (the Respondent), a residential health care facility (RHCF) subject to Article 28 of the Public Health Law, determined to discharge ██████████ (the Appellant) from care and treatment in its nursing home. The Appellant appealed the discharge determination to the New York State Department of Health pursuant to 10 NYCRR 415.3(i).

HEARING RECORD

Respondent witnesses: James Nesheiwat, MD
Jessica Villa, Director of Nursing
Divya Siddam, Physical Therapist/Rehabilitation Director
Olivia MacDougall, Director of Social Work

Respondent exhibits: 1-6

Appellant witnesses: ██████████
Jackie Bonesi, Hudson Valley LTC Ombudsman Program

Appellant exhibits: A

ALJ exhibit: I (Notice of hearing with attached notice of discharge.)

The hearing was held and recorded by videoconference. (I, 2h:38m. II, 0h:42m.)

SUMMARY OF FACTS

1. Respondent The Grand at Pawling is a residential health care facility, specifically a nursing home within the meaning of PHL 2801.2, located in Pawling, New York.
2. Appellant ██████████ age ██████████ was admitted as a resident in ██████████ 2021 for aftercare following ██████████ surgery. (Exhibit 4.)
3. By notice dated ██████████ 2021, the Respondent advised the Appellant that it had determined to discharge him on ██████████ 2022, on the grounds that his health has improved sufficiently that he no longer needs the services provided by the facility. (Exhibit ALJ I.)

4. The Appellant is no longer in need of nursing home care. He is medically stable and independent with a walker and with all care needs and activities of daily living. He receives no services from the Respondent other than meals and medication. His medical and therapy needs can be met on an outpatient basis.
5. The Appellant's treating physician and care team at The Grand at Pawling have determined, and documented, that he is no longer in need of nursing home care and that discharge to a shelter in the community is appropriate. (Exhibits 1-3.)
6. The ██████████ discharge notice advised the Appellant he would be discharged to ██████████ Shelter at ██████████ in ██████████. The discharge plan includes provision of appropriate equipment, medication and medical appointment referrals, and transportation.
7. The Appellant remains at The Grand at Pawling pending the outcome of this hearing.

ISSUES

Has the Respondent established that the Appellant's discharge from The Grand at Pawling is authorized and that the discharge plan is appropriate?

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 RHCF residents are set forth in PHL 2803-Z and Department regulations at 10 NYCRR 415.3(i). The regulation provides, in pertinent part:

- (1) With regard to the transfer or discharge of residents, the facility shall:

(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.

(vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility. 10 NYCRR 415.3(i)(1)

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

DISCUSSION

It is the unanimous professional opinion of the Respondent's care team, including its physician, director of nursing, director of rehabilitation and therapy, and director of social work, that the Appellant is not in need of nursing home care. He manages his own medical care and makes his own appointments with his own physicians. He has met all therapy goals and is able to perform all activities of daily living, including showering unassisted. (I, 0h:42-43,53m; 2h:5-6m.) Physical and occupational therapies that he may still require on discharge can be provided on an outpatient basis and do not require nursing home placement. (I, 1h:57m. II, 0h26m.) The Appellant's contention that because he

experiences pain and instability in walking he is still in need of nursing home placement was not supported by any persuasive evidence or professional or medical opinion, and it is contradicted by the professional opinion of the Respondent's care team.

The Appellant has been uncooperative with treatment from the facility medical team and has been making his own arrangements with his own physicians for his medical care. (I, 0h:31m; 1h:46m.) Dr. Neshiewat, an attending physician at the facility who has seen and examined the Appellant and overseen his facility care, testified that on [REDACTED] 2021 the Appellant refused to have an x-ray of his [REDACTED] done at the facility, preferring to have his own physicians do it. Dr. Neshiewat subsequently reviewed the [REDACTED] 2021 x-ray report from those physicians, which states "[REDACTED]" and that the [REDACTED] is in "excellent condition." (I, 1h:48-49m.) Dr. Neshiewat also testified that he reviewed blood work requested by the Appellant and that it has revealed "nothing significant." (I, 1h:50m.)

The Appellant has not produced any evidence or medical opinion to challenge the professional opinion of the Respondent's care team. He requested and was granted a continuance of the January 11 hearing on the grounds that he was seeing his [REDACTED] on [REDACTED] for an update on his [REDACTED] condition. (Exhibit A; I, 1h:18m.) This continuance afforded him the opportunity to further review facility records that he questioned without having himself reviewed, and to present evidence in support of his assertion that he is still in need of nursing home care. (I, 0h:4-6m.)

On January 14, when the hearing continued, the Appellant testified he did see his physician, Dr. [REDACTED] on [REDACTED]. Dr. [REDACTED] written findings stated there were no signs of infection and normal lab findings, that physical therapy and pain management were

indicated, and recommended follow up in three months. (Exhibit 5.) A referral ordering physical therapy 2-3 times per week for 6 weeks was forwarded to the Respondent. (Exhibit 6.) Dr. [REDACTED] reports offered no information or opinion with regard to any need for nor did his findings and orders even mention nursing home care. The Appellant presented no other additional evidence to call into question the professional opinion of Dr. Neshiewat and the facility care team that he is not in need of nursing home care. Grounds for discharge have been established.

Regarding the discharge plan, a nursing home must permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(i)(1)(vii). The Respondent complied with this regulation by making efforts to develop, with the Appellant's participation, a discharge plan acceptable to him. The Appellant lived with [REDACTED] [REDACTED] before hospitalization, but she informed the Respondent, and testified at this hearing, that she is unwilling to have him return to her home. (I, 1h:36,44m.) The Appellant apparently owns some sort of mobile home but is not willing to return there. The Respondent made referrals to three nursing homes and arranged for the Appellant to be interviewed at an assisted living facility, all without success. The Appellant has not asked the Respondent to explore any other options. (I, 0h:57m - 1h:0m; 2h:11m.)

It was only after these efforts were made by the Respondent to find other options that resort was had to a shelter. The [REDACTED] at [REDACTED] has been contacted and indicated that it will accept the Appellant. This shelter has an open floor plan, no stairs, a walk-in shower, and will provide assistance with social services and in finding more permanent housing. The discharge plan includes transportation to the shelter, medication

prescriptions and medical appointment referrals as needed and requested. A “lock box” will be provided by the Respondent if necessary to secure medications. (I, 1h:1-2,10m; 2h:32m. II, 0h:29m.)

The Appellant has had ample opportunity since he received notice of the discharge plan and requested this hearing on December 9, 2021 (I, 0h:1m), to further participate in discharge planning or to propose other discharge options for the Respondent to explore, but he has not done so. He has also failed to demonstrate any efforts of his own to develop an alternative to the Respondent’s plan.

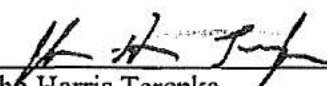
The Respondent’s obligation is to provide a discharge plan that meets the Appellant’s medical needs, not the discharge plan of his choice. The Appellant is not entitled to remain in nursing home care he does not need until he finds living arrangements that he wants. Under these circumstances and given the Appellant’s failure to participate in developing any alternative, the Respondent’s discharge plan is appropriate. The Respondent has met its burden of proving that the discharge is authorized and the discharge plan is appropriate.

DECISION: Respondent The Grand at Pawling has established valid grounds for the discharge of Appellant [REDACTED] and that its discharge plan is appropriate.

The Respondent is authorized to discharge the Appellant in accordance with the [REDACTED] 2021 discharge notice.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York
January 14, 2022



John Harris Terepka
Administrative Law Judge
Bureau of Adjudication