



**Department
of Health**

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

April 20, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Carmel Richmond Healthcare and
Rehabilitation Center
88 Old Town Road
Staten Island, New York 10304

Barbara Sylvester, DSW
Carmel Richmond Healthcare and
Rehabilitation Center
88 Old Town Road
Staten Island, New York 10304

████████████████████
████████████████████
████████████████████

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

Carmel Richmond Healthcare and Rehabilitation Center

Respondent,

to discharge Appellant from a residential health care facility.

COPY

DECISION

Before: Rayanne L. Babich
Administrative Law Judge (ALJ)

Date: April 6, 2022

Held at: Webex videoconference

Parties: ██████████ Appellant
c/o Carmel Richmond Healthcare and Rehabilitation Center
88 Old Town Road
Staten Island, New York 10304

Carmel Richmond Healthcare and Rehabilitation Center
88 Old Town Road
Staten Island, New York 10304

JURISDICTION

By notice dated ██████████ 2022, Carmel Richmond Healthcare and Rehabilitation Center (Facility) determined to discharge ██████████ (Appellant) from care in its Facility. 10 NYCRR 415.3(i)(1)(iii)(a). The Appellant appealed the proposed discharge. 10 NYCRR 415.3(i)(2). The hearing was digitally recorded (R. 1:22:31). The Appellant did not appear at the hearing but was

represented by her [REDACTED] [REDACTED]. The Facility was represented by Gina Esposito, Chief Clinical Officer and Barbara Sylvester, Director of Social Services.

RECORD

- ALJ Exhibits: I – Notice of Hearing
II – Notice of Discharge, [REDACTED] 2022
- Facility Exhibits: 1 – Resident Face Sheet
2 – Brief Interview for Mental Status, [REDACTED] 2022
3 – Physician Letter, [REDACTED] 2022
- Appellant Exhibit: A – Medical Records, [REDACTED], 2021 and [REDACTED] 2016
- Facility Witnesses: Sarina D’Alessandro, 5th Floor Unit Manager
Rajesh Karasetty, Director of Rehabilitation
Barbara Sylvester, Director of Social Services
- Appellant Witness: [REDACTED] [REDACTED] Appellant’s [REDACTED]

FINDINGS OF FACT

1. Carmel Richmond Healthcare and Rehabilitation Center is a nursing home. [Ex I, II.]
2. The Appellant, age [REDACTED] was admitted to the Facility, following a hospitalization for a fall, on [REDACTED], 2021, for short term rehabilitation to improve her ambulation, transferring, bed mobility, and a brief course of [REDACTED]. [Ex 1; R. 20:39; 23:40.]
3. The Appellant has been diagnosed with [REDACTED] and has a Brief Interview for Mental Status (BIMS) score [REDACTED] out of 15. [Ex 2; R. 51:27; 54:09; 1:02:10.]
4. The Appellant’s other medical diagnoses include [REDACTED]
[REDACTED]
[REDACTED] [Ex 1; R. 8:33; 1:02:10; 43:38.]

5. The Appellant's [REDACTED] requires daily nursing care. Facility staff provide care for the [REDACTED] at least one to two times per day and cleaning of the [REDACTED] area is necessary when [REDACTED]. The Appellant can [REDACTED] the [REDACTED] [REDACTED] when directed. [Ex 1; R. 9:07; 43:49.]
6. The Appellant requires the assistance of another person with bathing, dressing and toileting. She is dependent on a rolling walker for ambulation and must be supervised. [R. 13:13; 44:01; 1:08:30.]
7. The Appellant received physical and occupational therapy (therapy) during her admission and was discharged from those therapies on [REDACTED], 2022. [R. 20:39.]
8. The Facility cited as its grounds for discharge that the "resident's health has improved sufficiently so the resident no longer needs the services provided by the facility." [Ex II.]
9. The Facility's discharge plan is to transfer the Appellant to an assisted living facility, [REDACTED]. [Ex II; R. 1:11:55.]
10. The Appellant and her [REDACTED] objected to the discharge plan because she requires nursing home care, and the proposed discharge location cannot meet the Appellant's needs. [R. 46:00; 49:48.]

ISSUES

Has the Facility met its burden of proving that the Appellant's health has improved so that she no longer needs the services provided by the Facility and that the discharge plan is appropriate?

APPLICABLE LAW

1. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(i), which 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.
2. In preparation for discharge, a facility must develop a plan that "addresses the medical needs of the resident and how these needs will be met after discharge." 10 NYCRR 415.3(i)(1)(vi).
3. The Facility has the burden of proving that the "discharge or transfer is/was necessary and the discharge plan appropriate." 10 NYCRR 415.3(i)(2)(iii)(b).

Federal regulations at 42 CFR 483.15 contain substantially identical provisions.

DISCUSSION

The Facility has failed to meet its burden of proof to establish the grounds for discharge and that its discharge plan is appropriate according to 10 NYCRR 415.3(i).

The Facility is seeking to discharge the Appellant because it has determined that the Appellant has met her treatment goals, is able to ambulate with supervision while using a rolling

walker, and that her care needs can be met in a lesser restrictive setting, such as an ALF. [Ex II; R. 20:55; 24:59; 1:11:55.]

The Appellant's [REDACTED] [REDACTED] argued that the Appellant continues to require nursing home care due to her diagnosis of [REDACTED]. Mr. [REDACTED] credibly testified that not only is the Appellant unable to recall the circumstances that led to her prior hospitalization, but she is also unable to complete her activities of daily living independently or care for her [REDACTED] and [REDACTED]. [R. 44:01.] He testified that Facility staff bathe the Appellant and assist her with dressing. [R. 44:34.] He has observed the Appellant's need for assistance with transferring to the bathroom because she cannot toilet herself and is dependent on adult incontinence undergarments. [R. 1:09:28.]

Mr. [REDACTED] also explained his concerns that the Appellant is unable to provide safe and clean care for her [REDACTED] a task that requires attention because there is a risk for infection if not properly cared for. [R. 44:04; 47:11.] As he described, the Appellant's family was contacted by a floor nurse two days prior to the hearing with a report that the Appellant continues to "play with her [REDACTED]" [R. 47:25.] Mr. [REDACTED] testified that although the Appellant may have some [REDACTED] of how to [REDACTED] because it has been in place for many years, her [REDACTED] has left her no longer able to assess when such care is necessary. [R. 43:24.]

While the Facility has claimed the Appellant has met her treatment goals and is ready for discharge, it has failed to show that the Appellant is able to ambulate safely, transfer to and from her bed, perform her activities of daily living, or care for her [REDACTED]. The Director of Rehabilitation Services, Rajesh Karasetty, who supervised the rehabilitation staff providing direct care, testified that the Appellant's treatment goals were for the purposes of enabling her to safely return home in the community. [R. 23:01.] Mr. Karasetty explained that during her admission,

the Appellant completed an initial course of therapy, but was reenrolled after it was noted she had declined in her functioning. [R. 31:02.] The Appellant was last discharged from therapy on [REDACTED], 2022. [R. 20:46.] Mr. Karasetty testified that he completed an evaluation of the Appellant's "functional status" for discharge "some time in [REDACTED] but offered no proof of the evaluation and admitted it was not documented in the medical record. [R. 25:51.] Despite Mr. Karasetty's observation that the Appellant was able to walk "from the hallway up to the nursing station without any staff out," he failed to offer further proof that the Appellant was able to perform her activities of daily living. [R. 26:00.]

Sarina D'Alessandro, the Unit Manager for the 5th floor who has known the Appellant for only the past two to three weeks of her admission, was unable to provide a clear opinion on whether the Appellant can independently transfer in and out of bed or requires nursing assistance to care for her [REDACTED] [R. 8:38 – 19:57.]

The Facility also offered as proof a letter from the Appellant's attending physician, Miguel Tirado, M.D., stating that the Appellant completed rehabilitation on [REDACTED], 2022, is independent in transfers, requires supervision in ambulating [REDACTED] feet with a rolling walker, and "can be considered for a lower level of care." [Ex 3.] However, the Facility failed to present Dr. Tirado to explain further whether the discharge is necessary, or whether it is appropriate for the Appellant to be discharged to a lower level of care.

Mr. [REDACTED] and the Appellant objected to the discharge plan because the ALF cannot meet her medical needs. The Director of Social Services, Barbara Sylvester, testified that she did not work with the Appellant directly but supervised the social worker assigned to her. [R. 1:10:41.] Ms. Sylvester acknowledged the Appellant's [REDACTED] diagnosis but stated her cognitive status "seemed okay" even though she never interviewed the Appellant. [R. 1:14:59.] Ms. Sylvester

admitted that she has no knowledge of the Appellant's ability to care for her activities of daily living. [R. 1:15:45.] Ms. Sylvester also stated that she does not know how or whether the proposed discharge location can meet the Appellant's medical needs including her diagnosis of [REDACTED] [R. 1:15:55.] Her dismissive statement that the ALF staff "know her condition" and met with her before accepting her for admission is not persuasive. [R. 1:16:07.] With its obligation to ensure the discharge location can meet the Appellant's needs, the Facility cannot not delegate this responsibility and assume the discharge plan is appropriate.

I find the Facility has failed to meet its burden to establish grounds that the discharge is necessary or that the discharge plan is appropriate. 10 NYCRR 415.3(i)(1)(i)(a)(2) and 415.3(i)(2)(iii)(b).

ORDER

The Facility is not authorized to discharge the Appellant to the location identified in the Notice of Discharge dated [REDACTED] 2022, or in accordance with its discharge plan.

Dated: April 19, 2022
Albany, New York



Rayanne L. Babich
Administrative Law Judge

TO:

██████████ Appellant
c/o Carmel Richmond Healthcare and Rehabilitation Center
88 Old Town Road
Staten Island, New York 10304

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██████████

Barbara Sylvester, Director of Social Services
Carmel Richmond Healthcare and Rehabilitation Center
88 Old Town Road
Staten Island, New York 10304

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