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**Department
of Health**

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

July 5, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Golden Gate Rehabilitation and
Care Center
191 Bradley Avenue
Staten Island, New York 10314

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

**Golden Gate Rehabilitation
and Health Care Center,**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION

Hearing Before:

Natalie J. Bordeaux
Administrative Law Judge

Held via:

WebEx Videoconference

Hearing Date:

June 30, 2022

Parties:

Golden Gate Rehabilitation & Health Care Center
191 Bradley Avenue
Staten Island, New York 10314

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

██████████ ██████████
Pro Se

JURISDICTION

By notice dated [REDACTED] 2022, Golden Gate Rehabilitation and Health Care Center (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] [REDACTED] (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

Facility witnesses: Noreen Tan-Chu, M.D.
Dawn Engebretsen, RN Supervisor
Danny Matrecano, Director of Rehabilitation
Mary James, Director of Social Services

Facility exhibits: 1-7

Appellant witnesses: [REDACTED] [REDACTED] Appellant

The notice of hearing, discharge notice, and the accompanying cover letter were marked as ALJ Exhibit I. A digital recording of the hearing was made (2:13:32 in duration.)

ISSUES

Has Golden Gate Rehabilitation and Health Care Center established that its 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 male who was transferred from [REDACTED] Hospital to the Facility on [REDACTED] 2021 for short-term rehabilitation to aid his recovery from [REDACTED] that caused [REDACTED] [REDACTED]). (Exhibits 1, 2.)

2. The Appellant ambulates with a cane unassisted. He is independent with all activities of daily living (ADLs). (Exhibits 1, 6; Recording @ 35:46, 52:50, 1:09:04.)

3. By notice dated [REDACTED] 2022, the Facility determined to discharge the Appellant on [REDACTED] 2022, because his health has improved sufficiently that he no longer requires the services provided by the facility. The notice advised the Appellant that he would be discharged to [REDACTED] a shelter located at [REDACTED]. (Exhibit 4.)
4. The Appellant's clinical record contains documentation from his interdisciplinary team, including his physician, social worker, and physical therapist, that his condition has improved such that he no longer requires the services of a nursing home, and that discharge to the community is appropriate. (Exhibits 1, 5, 6.)
5. On [REDACTED], 2022, the Appellant requested this hearing to contest the Facility's discharge determination. He remains at the Facility pending the outcome of the hearing.

APPLICABLE LAW

A residential health care facility (also referred to in the 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).

Department regulations at 10 NYCRR § 415.3(i) describe the transfer and discharge rights of residential health care facility residents. They state, 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;

When the facility transfers or discharges a resident because the resident's health has improved sufficiently that the resident no longer needs the services provided by the facility, the facility shall ensure that the resident's clinical record contains complete documentation made by the resident's physician and, as appropriate, the resident's interdisciplinary care team. 10 NYCRR § 415.3(i)(1)(ii)(a). The residential health care facility must prove that the discharge was necessary and the discharge plan appropriate. 10 NYCRR § 415.3(i)(2)(iii)(b); State Administrative Procedure Act § 306(1).

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED], 2021 for short-term rehabilitation after receiving wound [REDACTED] and [REDACTED] at a hospital for [REDACTED] on his [REDACTED] [REDACTED] (Exhibits 1, 2; Recording @ 33:40.) On [REDACTED] 2021, the Appellant's wound care specialist determined that his wound was healed. (Recording @ 34:20, 52:20.)

The Appellant independently performs all ADLs. (Exhibits 1, 6; Recording @ 35:46, 52:50, 1:09:04.) He met all rehabilitation goals more than six months ago but continues to receive physical therapy three times a week to prevent a decline in [REDACTED]. (Exhibits 1, 6; Recording @ 1:07:50.) The Appellant can continue to access physical therapy in the community. (Recording @ 42:00, 1:08:00.)

The Appellant is already receiving outpatient care for maintenance of symptoms relating to his wound, and also travels to dental appointments. (Recording @ 34:44, 37:02, 53:50.) He does not receive any services at the Facility that he cannot continue to receive as an outpatient.

(Recording @ 37:20, 39:40, 40:36.) The Facility has established that the Appellant's health has improved sufficiently that he no longer requires the services provided by the facility.

The Appellant does not dispute that his health has improved sufficiently so that he no longer requires the services of a nursing home. However, he disagrees with the proposed discharge plan. (Recording @ 1:32:49.)

Shortly after his admission to the Facility in [REDACTED] 2021, Mary James, the Facility's Director of Social Services, notified the Appellant that she would begin discharge planning to prepare for the Appellant's eventual return to the community. (Recording @ 1:47:35.) Ms. James had explored discharging the Appellant to an adult home. However, the Appellant has no income, and no way of obtaining government benefits because his [REDACTED]. For that reason, he is ineligible for placement in an adult home. Although Ms. James sent a referral to the [REDACTED] nursing home waiver program for the Appellant because that program is intended for Medicaid recipients leaving nursing homes, [REDACTED] is unable to assist him right now due to his current immigration status. (Exhibit 1; Recording @ 1:13:38.) The Appellant advised Ms. James that he had submitted an application to [REDACTED], but he did not provide her with any specific information. (Recording @ 1:16:30.) As of the date of this hearing, the Appellant's immigration status remains unchanged. (Recording @ 1:18:00.)

After exhausting all other discharge options, Ms. James proceeded to effectuate the Appellant's discharge to the [REDACTED] Department of Homeless Services (DHS) shelter system as a last resort. However, the Appellant was unwilling to sign the DHS referral form and refused to take a COVID-19 test, both of which were required before he could be considered for shelter placement. (Exhibit 7; Recording @ 1:18:40.) Ms. James testified that she was then left with the present proposed discharge plan – a drop-off shelter operated by [REDACTED],

which would provide the Appellant with case management to assist with his application, obtaining government benefits, and finding housing. (Exhibits 1, 4; Recording @ 1:21:40, 1:48:22.)

The Appellant expressed a need for more time at the Facility while he awaits receipt of a . (Recording @ 1:35:08.) However, he was unable to offer a specific timeframe or reasonable estimate of time by which he can expect to receive the that would then help him with procuring the government benefits that he needs in order to obtain housing.

The Appellant testified that he submitted a renewal application for his in 2021, but he did not maintain copies of the submitted documentation and testified that he has not received any response from the).

(Recording @ 1:36:00.) The website advises applicants for renewal of that they will receive a confirmation when their application is received.

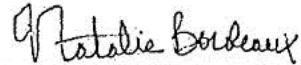
Although he conceded that he has no need for services provided by a nursing home, the Appellant stated that he does not want to be homeless and should be able to remain at the Facility at least until his Medicaid coverage ends in 2022. (Recording @ 1:40:50, 1:43:18, 1:47:14.) Continued Medicaid coverage is not a basis for a continued nursing home stay for someone who does not need to be in such a setting. The Appellant also stated that friends with whom he had previously resided have left the country, and that he has no one to stay with in lieu of either remaining at the nursing home or staying in a shelter. (Recording @ 1:44:20.) The purpose of the requested hearing and resulting decision is to evaluate whether a discharge plan is appropriate, not whether it is ideal.

The Facility is required to ensure that short-term rehabilitation patients attain their maximum functional potential and regain their independence to help them return to the community. It met those obligations to the Appellant months ago. The Appellant's legal and personal difficulties prevented other discharge options from materializing. As such, the Facility appropriately determined, as a last resort, to discharge the Appellant to a drop-off shelter. The Facility's determination is sustained.

DECISION

Golden Gate Rehabilitation and Health Care Center established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate.

Dated: July 5, 2022
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge