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Department of Health

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

June 27, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Dr. Susan Smith McKinney
Nursing and Rehabilitation
594 Albany Avenue
Brooklyn, New York 11203

Sara Freizer, DSW
Dr. Susan Smith McKinney
Nursing and Rehabilitation
594 Albany Avenue
Brooklyn, New York 11203

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 Long

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
Enclosure

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

COPY

In the Matter of an Appeal, pursuant to 10 NYCRR 415.3, by

██████████,

Appellant,

DECISION

from a determination by

**Dr. Susan Smith McKinney Nursing and
and Rehabilitation Center,**

Respondent,

to discharge Appellant from a residential health care facility.

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

Date: June 5, 2023

Held at: New York State Department of Health
Webex videoconference

Parties: ██████████, Appellant
c/o Dr. Susan Smith McKinney Nursing and Rehabilitation Center
594 Albany Avenue
Brooklyn, New York 11203
Pro se

Dr. Susan Smith McKinney Nursing and Rehabilitation Center
594 Albany Avenue
Brooklyn, New York 11203

By: Sara Freizer, Director of Social Work

JURISDICTION

By notice dated ██████████ 2023, Dr. Susan Smith McKinney Nursing and Rehabilitation Center, a residential health care facility (Facility), determined to discharge ██████████ (Appellant), from care in its Facility. The Appellant appealed the proposed discharge on ██████████

██████████ 2023. The Facility's request for an adjournment of the hearing scheduled for May 3, 2023 due to an unannounced Department of Health inspection was granted, and the hearing was rescheduled for May 25, 2023. The Appellant's request for an adjournment of the hearing scheduled for May 25, 2023 due to the Appellant's illness was also granted and the hearing was rescheduled for June 5, 2023.

RECORD

ALJ Exhibits [Ex]: I – Notice of Hearing, April 21, 2023
II – Notice of Discharge, ██████████, 2023
III – Admission Record

Facility Exhibits: 1 – Social Services Progress Notes: ██████████ 2020 through ██████████ 2023
2 – Medical and Nursing Progress Notes: ██████████ through ██████████ 2023
3 – Medical Visit Note, ██████████, 2023
4 – Email communication, ██████████, 2023

Appellant Exhibit: A – Appointment List

Facility Witnesses: Sara Freizer, Director of Social Work
Waly Moiseau, Assistant Director of Nursing
Kamal Latchman, Social Worker
Osa Guobadia, Facility Physician

Appellant Witness: ██████████

The hearing was digitally recorded. [R. 1:55:24.] The hearing record closed on June 9, 2023.

SUMMARY OF FACTS

1. The Appellant was admitted to the Facility on ██████████ 2020 for short-term rehabilitation services following a hospitalization due to ██████████. The Appellant received physical and occupational therapy. He met his rehabilitation treatment goals and was discharged from therapy services in ██████████ 2021. [Ex 2; R. 25:08, 33:40.]

2. The Appellant is independent in his activities of daily living and ambulates independently with use of a walker as he desires. [Ex 2; R. 35:17.]
3. On [REDACTED], 2023, the Facility issued a Notice of Discharge to the Appellant which stated that his "health has been significantly stabilized and no longer needs the services of the facility." [Ex II.]
4. The Facility has proposed to discharge the Appellant to a men's shelter located at [REDACTED]. The shelter has accepted the Appellant. [Ex II, 4; R. 50:06.]
5. Facility physician Osa Guobadia, M.D., and [REDACTED], Nurse Practitioner, have documented in the Appellant's medical record that the Appellant is medically stable for discharge to a shelter, independent, and does not require services provided by the Facility. [Ex 2, 3.]

ISSUES

Has the Facility met its burden of proving that the discharge is necessary and that the 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. Before discharging a resident, the Facility must record the reasons in the resident's clinical record. 10 NYCRR 415.3(i)(1)(iii)(b).
3. If the Facility seeks to discharge a resident because the resident's health has improved sufficiently so that he no longer needs the services provided by the facility pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2), documentation in the clinical record shall be made by the resident's physician, and if appropriate, by the resident's interdisciplinary team. 10 NYCRR 415.3(i)(1)(ii)(a).
4. 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).

DISCUSSION

The Facility is seeking to discharge the Appellant because his health has improved so that he no longer requires the services provided by the Facility. [Ex II.] The Facility determined that the Appellant has successfully completed rehabilitation services and is independent in ambulation and activities of daily living. [Ex 1, 2; R. 25:08, 34:21.] The Appellant objected to the discharge because he still requires the use of a walker and has [REDACTED]. [R. 1:38:42.]

The hearing record remained open until June 9, 2023 for the Appellant to submit documentation

of pending medical appointments for his [REDACTED]. The Appellant submitted an appointment list. [Ex A.]

The Appellant's medical team at the Facility has determined that he is appropriate for discharge. Facility physician, Osa Guobadia, M.D., documented his findings in the Appellant's medical record on [REDACTED], 2023. He testified that the Appellant has completed rehabilitation services and is medically stable to be discharged to a shelter. [Ex 2; R. 25:08, 27:12.] Dr. Guobadia also explained that the Appellant's routine medical care and follow-up appointments for [REDACTED] can be provided in the community with his established medical providers. [R. 25:14, 27:03.] On [REDACTED] 2023, Facility Nurse Practitioner, [REDACTED] examined the Appellant and documented in the Appellant's medical record that he independently completes his activities of daily living and capable of ambulation without an assistive device. [Ex 2.]

Assistant Director of Nursing, Waly Moiseau, testified that the Appellant does not receive skilled services and the nursing staff provides no assistance with his daily care needs. [R. 34:07.] Ms. Moiseau has also observed that the Appellant appropriately manages his affairs, coordinates his medical appointments, and arranges his own transportation to appointments in the community. [R. 33:40.]

The proposed discharge location is to a men's shelter located at [REDACTED] [REDACTED] [REDACTED] [REDACTED]. [Ex II.] The Facility determined that the Appellant's medical needs can be met at a shelter. [R. 49:31.] The Appellant objected to the discharge because he cannot tolerate noise in the morning and a shelter will be loud. [R. 1:46:52.]

The Appellant's assigned social worker, Kamal Latchman, testified that the Appellant refused to engage with him to plan for discharge. [R. 41:57.] Mr. Latchman attempted to provide

referrals to housing program and financial resources, but the Appellant declined to consent to the referrals or disclose the necessary personal information. [R. 54:34.] The Director of Social Work at the Facility, Sara Freizer, testified that she supervised Mr. Latchman and other social work staff in their efforts to assist the Appellant with no success, and the shelter is the only remaining option. [R. 1:08:28, 1:10:38.] An application to the shelter was submitted on [REDACTED] 2023 and Ms. Freizer received written confirmation on [REDACTED] 2023 from the shelter that the Appellant had been accepted. [Ex 4; R. 1:07:52.] Mr. Latchman testified that the Appellant could access resources at the shelter to continue his search for permanent housing. [R. 1:08:15.]

The Appellant's claim that a shelter is not suitable because he expects it will be loud is not reasonable. Noise from others may be present at any location the Appellant enters, including at the Facility.

The evidence supports that the Appellant is independent and no longer requires the services provided by the Facility. He can follow up with his medical providers in the community for his future medical care needs. [Ex 2, 3; R. 28:02, 42:43.] The Facility has met its burden to prove that the discharge is necessary and that the proposed discharge location is appropriate.

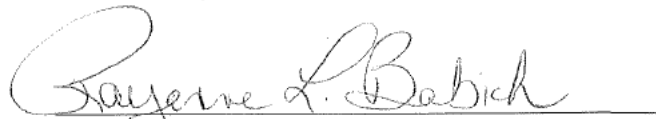
ORDER

Dr. Susan Smith McKinney Nursing and Rehabilitation Center met its burden to prove that its determination to discharge the Appellant is necessary, and that discharge the men's shelter at [REDACTED] is appropriate.

1. The Facility is authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED] 2023.

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: June 27, 2023
Albany, New York

A handwritten signature in cursive script that reads "Rayanne L. Babich". The signature is written in black ink and is positioned above a horizontal line.

Rayanne L. Babich
Administrative Law Judge

TO:

██████████, Appellant
c/o Dr. Susan Smith McKinney Nursing and Rehabilitation Center
594 Albany Avenue
Brooklyn, New York 11203

Sara Freizer, Director of Social Work
Dr. Susan Smith McKinney Nursing and Rehabilitation Center
594 Albany Avenue
Brooklyn, New York 11203