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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

October 6, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o River Ridge Living Center
100 Sandy Drive
Amsterdam, New York 12010

Noelle Marie, Ombudsman
Catholic Charities Senior and Caregiver
Support Services
NYS Long Term Care Ombudsman Program
1462 Erie Boulevard
Schenectady, New York 12305

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

Lori Tambasco, NHA
River Ridge Living Center
100 Sandy Drive
Amsterdam, New York 12010

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
RIVER RIDGE LIVING CENTER
Respondent,

to discharge him from a residential health care facility

COPY

DECISION

Hearing Before: Jean T. Carney
Administrative Law Judge (ALJ)

Held via: Cisco WebEx videoconference

Hearing Date: September 27, 2022

Parties: River Ridge Living Center, Respondent
By: Barbara Phair, Esq.
Abrams Fensterman, LLP
bphair@abramslaw.com

██████████ ██████████ Appellant, *Pro se*

JURISDICTION

By notice dated [REDACTED], 2022, River Ridge Living Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] [REDACTED] (Appellant) from the Facility on the grounds that the Appellant's condition had sufficiently improved so that he no longer needed the services provided by the Facility. The proposed discharge location is to the [REDACTED] Motel (Motel), [REDACTED]. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i).

HEARING RECORD

In support of its determination, the Facility presented documents (Exhibits 1-6) and the testimony of Renee Pomatto, Nurse Practitioner; Ronoel Pagente, Physical Therapist; Christine Neri, LPN; and Kristen DeSanto, Director of Social Services. The Appellant testified in his own behalf. Also present was Noelle Marie, Ombudsman Coordinator for long term care at Catholic Charities. ALJ Exhibits I and II were admitted; and the hearing was digitally recorded.

ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refers to the testimony of the witness ("T") at the hearing and exhibits ("Exh") found persuasive in arriving at a particular finding. Any conflicting

evidence was considered and rejected in favor of the cited evidence. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2022 from [REDACTED] for short term rehabilitation, with relevant diagnoses of [REDACTED] [REDACTED] (Exh II).

2. The Appellant previously resided in an efficiency apartment in [REDACTED] County; but that residence is no longer available. The Appellant requires [REDACTED] three times per week, and needs to reside in an area where he can access transportation to [REDACTED] (T Appellant).

3. The Appellant is independent in his activities of daily living (ADLs). He ambulates without assistance, including navigating stairs; makes his bed in the morning; and bathes, grooms, and gets dressed by himself. The Appellant independently manages his medications and medical appointments. The Appellant was discharged from physical and occupational therapies because he has returned to his baseline functions. (T Pomatto, Pagente, Neri, and Appellant; Exhs 1, 2, 3, and 5).

4. The Facility determined to discharge the Appellant to the Motel after making numerous attempts to find alternate placements. The Appellant was rejected by the [REDACTED] Assisted Living Facility, and has been placed on waiting lists for apartments in [REDACTED] and [REDACTED] (T DeSanto and Appellant; Exh 6).

5. The Facility plans to coordinate with [REDACTED] County meals on wheels and the Department of Social Services to facilitate the Appellant's transition to the community. The Facility will provide taxi vouchers for the Appellant's transportation to medical appointments and [REDACTED] they will arrange for him to see a primary care

physician; and send his prescriptions to an accessible pharmacy to ensure his medical needs are met after his discharge. (T Neri and DelSanto).

6. At the time the discharge notice was issued, the Appellant was not eligible for Medicaid because he owned property. At the hearing, the Appellant disclosed that he had sold the property, and was willing to apply for Medicaid. (T Appellant).

APPLICABLE LAW

A residential health care facility, also referred to 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] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(1)(i)(a), a resident may only be discharged when the interdisciplinary care team determines that:

- (1) the transfer of discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;
- (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;
- (3) the safety of individuals in the facility is endangered; or
- (4) the health of individuals in the facility is endangered.

Additionally, 10 NYCRR § 415(i)(1)(ii) requires that the facility ensures complete documentation in the resident's clinical record when transferring or discharging a resident under the above circumstances. The documentation shall be made by:

- (a) the resident's physician and, as appropriate, interdisciplinary care team, when transfer or discharge is

necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; and

(b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph.

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision. (*Stoker v. Tarantino*, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3rd Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

DISCUSSION

The Appellant does not dispute the Facility's assessment that he is capable of functioning in the community and no longer needs skilled nursing. He opposes the discharge plan because he believes the proposed discharge location is not safe. He has heard that the Motel is not clean, and has bedbugs. The Appellant would like to remain in the Facility until he can find an apartment. The Facility maintains that the Motel will meet the Appellant's needs until he is able to obtain more permanent housing.

The Facility has met its burden of showing that the discharge is necessary, and the plan is appropriate. The treatment team testified that the Appellant is completely independent in his ADLs, including medication management, grooming, and making his bed. He is capable of arranging transportation and medical appointments, walks without assistance, including navigating stairs. The Appellant agreed with the testimony regarding his abilities, and agreed that he does not need skilled nursing services at this

time. The evidence establishes that the Appellant's medical needs can be met in the community, and he no longer needs the services provided in the Facility.

A discharge plan must "[address] the medical needs of the resident and how these will be met after discharge." (10 NYCRR § 415.3[i][1][vi]). The Facility will ensure that the Appellant will be discharged with a primary care physician, transportation to [REDACTED] sufficient medication, and will set up meals on wheels to ease the Appellant's transfer into the community. The Facility also said they will coordinate with the local social services agency and assist the Appellant in applying for Medicaid.

The Appellant argued that due to his [REDACTED], he needs a clean residence, and he has heard that the Motel is not clean. However, he did not present any evidence to support this belief. Mere supposition is not sufficient to overcome the evidence presented in support of the discharge plan. The Appellant does not want to be discharged until he finds an apartment. However, the Facility has shown that the Motel will meet the Appellant's needs and is therefore appropriate. While the Motel is not the Appellant's preference, his preference is not currently available to him, and the Facility is not required to wait until it does become available.


ORDER

River Ridge Living Center has established that its discharge plan is appropriate.

1. The Facility is authorized to discharge the Appellant to the [REDACTED] Motel, on or after [REDACTED] 2022, once it has made all arrangements for transportation, found a primary care physician, set up meals on wheels, and coordinated with the [REDACTED] County Department of Social Services for additional services as may be deemed necessary, such as applying for Medicaid and housing assistance, to ensure the Appellant's smooth transition into the community.


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: Albany, New York
October 6, 2022


JEAN T. CARNEY
Administrative Law Judge

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