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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

June 15, 2022

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Staten Island University Hospital
375 Sequine Avenue
Staten Island, New York 10309

Michael Kraus, Administrator
Silver Lake Specialized Rehabilitation
and Care Center
275 Castleton Avenue
Staten Island, New York 10301

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Douglas K. Stern, 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

[REDACTED]

Appellant,

from a determination by

SILVER LAKE SPECIALIZED REHABILITATION
AND CARE CENTER

to discharge her from a residential health
care facility facility

COPY

Hearing Before: Sean D. O'Brien
Administrative Law Judge

Held via WEB EX

Hearing Date: June 10, 2022

Parties: Silver Lake Specialized Rehabilitation
and Care Center
275 Castleton Avenue
Staten Island, New York 10301
By: Michael Kraus, Administrator

Staten Island University Hospital
375 Sequine Avenue
Staten Island, New York 10309
By: Douglas K. Stern, Esq.
Abrams, Fensterman, LLP
3 Dakota Drive
Suite 300
Lake Success, New York 11042

[REDACTED] pro se,

JURISDICTION

By notice dated [REDACTED] [REDACTED], 2022, Silver Lake Specialized Rehabilitation and Care Center (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [REDACTED] [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant, through her designated representative, [REDACTED] [REDACTED] appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) Section 415.3(i).

HEARING RECORD

Facility Exhibits: 1-11 .

Facility Witnesses: Lori Questel, L.S.W., Dir. Of Social Work
Tina Marie Torricelli, R.N., Dir. Of Nursing
Patricia Abruzzese, R.N. Asst. Dir. Of Nursing

Staten Island University Hospital Witnesses:
Dr. Daniel Glickman
Barbara Brandi, Social Worker

Appellant's Witness: [REDACTED] [REDACTED]

Administrative Law Judge Exhibit I: Notice of Hearing

A digital recording of the hearing was made part of the hearing record via WEB EX. The Appellant was not present at the Hearing. The Appellant's designated representative, [REDACTED] filed the present appeal and was present and participated in the Hearing.

ISSUE

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

FINDINGS OF FACT

Citations in parentheses refer to testimony (T) of witnesses and exhibits (Exhibit) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on or about [REDACTED] [REDACTED] 2021, for long term care with diagnoses that include [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Exhibits 1, 2; T Questel 47:58, 48:37).

2. By notice dated [REDACTED], 2022, the Facility determined to discharge/transfer the Appellant on that same day because

the health and safety of individuals at the Facility were endangered and the "urgent medical needs" of the Appellant could not be met by the Facility. (Exhibits 1, 3, 5, 9, 11; T Questel 25:40, T. [REDACTED] T 59:40).

3. On [REDACTED] 2022, the Facility discharged/transferred the Appellant to Staten Island University Hospital (SIUH) emergency room due to [REDACTED] and her [REDACTED] and disruptive conduct at the Facility. SIUH, on or about [REDACTED] 2022, cleared the Appellant for discharge back to the Facility, but the Facility refused to accept the Appellant back. (Exhibits 1, 5, 7, 10, 11; T. Questel, 25:40, T. [REDACTED] 59:33 T Glickman, 2hr:12, T Brandi 2hr:25).

4. The Facility did not involve the Appellant or her designated representative, [REDACTED] [REDACTED] in the discharge planning process and in particular the determination to unilaterally discharge/transfer the Appellant to SIUH. 10 NYCRR 415.11 and 10 NYCRR 415.3(i)(1)(vi). (T Questel, 50:28, 51:05, T Brandi 2hr:26, T [REDACTED] 2hr:40).

5. The Appellant remains at SIUH pending the outcome of the appeal.

APPLICABLE LAW

A residential health care facility (also referred to in the Department of Health Rules and 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 Sections 2801(2)(3); 10 NYCRR Section 415.2(k).

A resident may only be discharged/transferred pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR Section 415.3[i][1]).

The Facility alleges the Appellant's discharge is permissible pursuant to 10 NYCRR Section 415.3(I)(1)(I)(a)(3)(4), which states in relevant part:

The safety [and health] of the individuals in the facility is endangered....

Under the hearing procedures at 10 NYCRR Section §415.3(i)(2)(ii), the Facility bears the burden to prove a discharge necessary and the discharge plan is appropriate. Under the New York State Administrative Procedures Act (SAPA) Section

306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. 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.

DISCUSSION

The Appellant was admitted to the Facility in [REDACTED] 2021, for long term care. Her diagnoses include [REDACTED] [REDACTED] [REDACTED]. The intake plan for the Appellant was for long term placement at the Facility. (Exhibits 1, 2; T. Questel 47:45).

Commencing in [REDACTED] 2021 and continuing through the date of her discharge/transfer the Appellant engaged in a series of behaviors that placed the facility's staff and residents at risk for their safety. Appellant's behavior included [REDACTED] or [REDACTED] at staff and residents, [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED]. (Exhibits 1, 5; T. Questel 25:40 T. [REDACTED] 59:33, 59:40).

On or about [REDACTED], 2022, the Facility's social workers, nursing and medical staff determined that based on the behaviors of the Appellant, the best course of action for the Appellant and the residents and staff at the Facility was to discharge/transfer the Appellant to SIUH immediately for treatment. (Exhibits, 1, 3, 5, 9, 11; T Questel, 25:40, T [REDACTED] 1hr:12)

There is a regulatory framework for skilled nursing facilities to follow prior to the discharge/transfer of a resident. The Facility is required to "...provide sufficient preparation and orientation to residents to ensure safe and orderly...discharge from the facility...." 10 NYCRR 415.3(i)(1)(vi). The regulations also require a post discharge plan *"...that shall be developed with the participation of the resident and...her...family,* which will assist the resident to adjust to...her new living environment...." (Emphasis added) 10 NYCRR 415.11(d)(3).

The above cited regulatory requirements were not met by the Facility in this case. In [REDACTED] 2021, when the Facility first admitted the Appellant, it was known she had "unspecified [REDACTED] [REDACTED] [REDACTED]". (Exhibits 1, 4; T [REDACTED] 2hr:41). The conduct of the Appellant should not have come as a surprise to the Facility's staff. In addition, the Facility claims

it can handle residents like the Appellant who have [REDACTED] since it cares for approximately [REDACTED] residents. (T [REDACTED] 1hr:30).

In a "Dear Nursing Home Administrator" letter dated August 20, 2019, DAL-NH 19-07) the Department placed all residential health care facilities on notice that discharges to hospitals are not appropriate discharge locations if a resident's clinical or behavioral status endangers the health and/or safety of others at the Facility. The letter in paragraph 8 in the "Frequently Asked Questions" section goes on to state, "[a] facility's determination not to permit a resident to return **must not** be based on the resident's condition when originally sent to the Hospital." (Emphasis added).

Over the several months the Appellant has been at the Facility she engaged in disruptive behaviors and [REDACTED], but the Facility never commenced a proper discharge planning process to another skilled nursing facility or treatment facility which could better address the Appellant's conditions. The Facility did not attempt to do long-term planning for the Appellant with her designated representative's participation. Rather, the Facility

took a short-term response of discharging/transferring Appellant to a hospital in reaction to the Appellant's immediate behaviors.

The basis to discharge/transfer the Appellant because of her conduct is established. However, the Department's regulations mandate the Facility do proper discharge planning for the Appellant prior to discharge. That was not done in this case.

CONCLUSION

The Facility has established a basis to discharge the Appellant, but it failed to develop a proper discharge plan for the Appellant in the manner required by the Department's regulations.

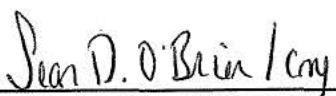
DECISION

The appeal by Appellant is therefore Denied and Affirmed in part.

The Facility is not authorized to discharge Appellant in accordance its [REDACTED] [REDACTED] 2022, Discharge Notice. The Facility must readmit the Appellant to the first available semi-private bed before it admits any other person to the Facility. 10 NYCRR 415.3(i)(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 (CPLR).

DATED: Albany, New York
June 15, 2022



Sean D. O'Brien
Administrative Law Judge

