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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

December 22, 2022

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Bensonhurst Center for Rehabilitation
and Nursing
1740 84th Street
Brooklyn, New York 11214

Lina Feygin, Director of Social Work
Bensonhurst Center for Rehabilitation
and Nursing
1740 84th Street
Brooklyn, New York 11214

RE: In the Matter of [REDACTED] – 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

██████████

DECISION

Appellant,

DA22-5911

from a determination by

BENSONHURST CENTER FOR
REHABILITATION AND NURSING

to discharge him from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Date: December 20, 2022

Parties: ██████████
c/o Bensonhurst Center for Rehabilitation and Nursing
1740 84th Street
Brooklyn, New York 11214
By: Pro Se

Bensonhurst Center for Rehabilitation and Nursing
1740 84th Street
Brooklyn, New York 11214
By: Lina Feygin, Director of Social Work

JURISDICTION

By notice dated [REDACTED] 2022, Bensonhurst Center for Rehabilitation and Nursing (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) 415.3(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. A digital recording was made of the proceeding.

HEARING RECORD

ALJ Exhibits: 1 – Letter with Notice of Hearing and Transfer/Discharge Notice

Facility Exhibits: 1 – Admission Face Sheet
2 – Demographic
3 – Medication
4 – Social Work Notes
5 – PT Notes
6 – OT Notes
7 – Transfer/Discharge Notice
8 – MD Notes
9 – NP Admission Note
10 – MDS Assessment
11 – NP Discharge Note

Appellant Exhibits: None

Facility Witnesses: Lina Feygin, Director of Social Work
Phillip Cheung, Social Worker
Kathrina Lati, Director of Rehabilitation
Lilia Tsarukyan, Charge Nurse

Appellant Witnesses: None

Translator: Christina Chen, Facility Concierge

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2022, for short-term rehabilitation. Immediately prior to admission he was in the hospital for [REDACTED]. (Exhibits [Exs.] 1, 2, 9; Testimony [T.] Feygin, Cheung, Tsarukyan.)

2. Prior to his hospital and nursing home admissions, the Appellant was living in a private home in the community. The home was owned by him in the past, but the current owner of record is the Appellant's [REDACTED] (Testimony [T.] Feygin.)

3. The Appellant received three months of physical therapy (PT) and occupation therapy (OT) while at the Facility and was discharged from both on [REDACTED], 2022, having reached his maximum potential rehabilitation level. (Exs. 5, 6; T. Lati.)

4. Upon admission, the Appellant required a one-person extensive assist to ambulate. The Appellant is now able to ambulate independently with a straight cane. (Exs. 5, 6; T. Lati.)

5. The Appellant is independent in his activities of daily living (ADLs). (T. Lati, Tsarukyan, Cheung.)

6. The Appellant is alert and oriented to person, place and time. (T. Feygin.)

7. The Appellant takes several medications daily with assistance of someone preparing the medications for him. His [REDACTED] needs to be checked periodically and he can be educated to check it himself. Administration of his [REDACTED] when needed, requires assistance. (Ex. 3; T. Tsarukyan.)

8. The Appellant has no skilled nursing needs and all of his medical and functional needs can be safely managed in the community. (Ex. 11; T. Tsarukyan, Lati.)

9. On [REDACTED], 2022, the Facility issued a Transfer/Discharge Notice to the Appellant which proposed discharge to an assisted living facility, [REDACTED] located in [REDACTED] New York. (ALJ Ex. 1; Ex. 7; T. Feygin.)

10. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant's health has improved sufficiently such that the Appellant no longer requires the services of the facility. (ALJ Ex. 1.)

11. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.

12. The Appellant has remained at the Facility during the pendency of the appeal.

ISSUES

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

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. (PHL § 2801[2][3]; 10 NYCRR 415.2[k].)

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

The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415(i)(1)(i)(a)(2), which states:

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.

Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate. Under SAPA § 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. It is less than a preponderance of evidence but more than mere surmise, conjecture or speculation, and it constitutes a rational basis for a decision. (*Stoker v. Tarantino*, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3d Dept. 1984], appeal dismissed 63 N.Y.2d 649.)

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] 2022, and he received three months of PT and OT from the Facility during his stay. The Appellant was discharged from both therapies on [REDACTED] 2022, having reached his maximum potential rehabilitative level. Kathrina Lati, the Director of Rehabilitation, testified that the Appellant is independent in all his ADLs. Ms. Lati also testified that the Appellant is able to ambulate independently with a straight cane.

Lilia Tsarukyan, a charge nurse, testified that the Appellant has no skilled nursing needs. She testified that the Appellant takes medications for various medical conditions, including [REDACTED] that can safely be managed in an assisted living facility or at home in the community with the assistance of a family member or home health aide.

Lina Feygin, the Director of Social Work, testified that testified that the Appellant was previously living in the community in a house that he owned but that the house is now titled to his [REDACTED]. Ms. Feygin testified that Appellant's [REDACTED] is not agreeable to the Appellant being discharged back to that private residence. As such, the Facility identified an assisted living facility

nearby that has accepted the Appellant and is able to assist the Appellant with medication management/administration. Phillip Cheung, a social worker, testified that the Appellant is alert and oriented to person, place, and time, is independent in his ADLs, is able to express his needs and wants, and has expressed a desire to go home.

The Appellant, whose primary language is [REDACTED] was unable to meaningfully participate in the hearing despite translation services provided by Christina Chen, a concierge at the Facility whose job is to provide translation assistance to the [REDACTED] population. The Appellant seemingly had difficulty hearing the translator despite her [REDACTED]. The Appellant also voiced uncertainty about how to respond to questions posed to him by the ALJ. The Appellant stated on more than one occasion that his [REDACTED] makes his decisions for him.¹

The evidence supports that the Appellant's health has improved sufficiently such that he no longer needs the services of a skilled nursing facility. The Appellant has completed his rehabilitation program at the Facility and his medical needs can be met at home or in an assisted living facility. Unless the Appellant's [REDACTED] has since changed her mind and is willing to allow her [REDACTED] to go back home, the Appellant's prior home is no longer an available discharge location. However, the assisted living facility identified in the Transfer/Discharge Notice is available and an appropriate discharge location.²

¹ The Appellant's [REDACTED] as the Facility's noted representative for the Appellant, was served with the Notice of Hearing in this matter. The hearing date was selected for the purpose of accommodating the Appellant's [REDACTED] who stated she was traveling the prior week and requested a date after [REDACTED] 2022. On [REDACTED], 2022, the Appellant's [REDACTED] contacted the Bureau of Adjudication and asked for an adjournment on the basis that she was tired from a [REDACTED] she had just taken, and because she was unable to get in touch with one of her [REDACTED]. The ALJ denied the adjournment request. The Appellant's [REDACTED] did not appear at the hearing despite being sent the link to attend via videoconferencing. She also advised the Facility that she would not be participating. (Ex. 4.)

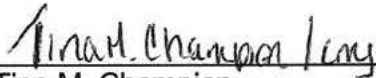
² Ms. Feygin raised a concern that the Appellant's social security income would not properly go to the assisted living facility for payment due to the Appellant's [REDACTED] taking that money; however, that issue is both premature and not within the ALJ's jurisdiction.

DECISION

Bensonhurst Center for Rehabilitation and Nursing has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Bensonhurst Center for Rehabilitation and Nursing is authorized to discharge the Appellant in accordance with its discharge plan on or after [REDACTED], 2022.
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: Menands, New York
December 22, 2022


Tina M. Champion
Administrative Law Judge

TO: [REDACTED]
c/o Bensonhurst Center for Rehabilitation and Nursing
1740 84th Street
Brooklyn, New York 11214

Lina Feygin, Director of Social Work
Bensonhurst Center for Rehabilitation and Nursing
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