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Department of Health

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

March 15, 2023

CERTIFIED MAIL/RETURN RECEIPT

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

[REDACTED]
c/o [REDACTED]
[REDACTED]

Edward Cienki, Esq.
Silverlake Hospital
495 North 13th Street
Newark, New Jersey 07807

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: nm
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

The Grand at Guilderland

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AND
ORDER

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: WebEx videoconference

Hearing Dates: February 13, 2023 and March 14, 2023
The record closed March 14, 2022

Parties: The Grand at Guilderland
428 State Route 146
Altamont, New York 12009
By: Barbara Phair, Esq.
Abrams Fensterman, LLP
3 Dakota Drive, Suite 300
Lake Success, New York 11042

By: ██████████ ██████████ Appellant's ██████████
██████████
██████████

JURISDICTION

The Grand at Guilderland (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge █ (the Appellant). The Appellant’s designated representative, his █ appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

- Facility witnesses: Timothy Turbett, M.D., Medical Director
Cassandra Skinner, Director of Social Work
- Facility exhibits: 1-3
- Appellant witnesses: Karli Kohut, President and CEO, Silverlake Hospital
█ Appellant’s █
Lyndsey House, Nurse Case Manager, Ellis Hospital, by phone
- Appellant exhibits: None
- ALJ exhibits: I

Digital recordings of the hearing on both February 13 and March 14 were made.

ISSUES

Has The Grand at Guilderland established that its determination to discharge the Appellant was correct and that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is an █-year-old male who was admitted to the Facility on █ 2022 from █ Hospital. (Exhibit 1.)
2. The Appellant is diagnosed with █ with █, █ and █. (Exhibit 1.)

3. On [REDACTED], 2023, the Appellant was sent to [REDACTED] Hospital's Emergency Department for an evaluation after he [REDACTED] another resident's [REDACTED]. He returned the same day. (Exhibit 3.)
4. On [REDACTED] 2023, the Appellant was observed [REDACTED] another resident, [REDACTED] in a [REDACTED] and then [REDACTED] him in the face [REDACTED] a [REDACTED]. The Appellant was sent to [REDACTED] Hospital's Emergency Department for a [REDACTED] evaluation. (Exhibit 3.)
5. On [REDACTED] 2023, the Facility received records from the hospital Emergency Department regarding the treatment rendered to the Appellant and was advised that the Appellant could return to the Facility. When the Facility requested [REDACTED] clearance in the form of a guarantee that the Appellant was not a danger to himself or other, it was informed that the hospital's [REDACTED] would not provide such clearance. (Exhibit 3.)
6. Upon being informed of the Facility's unwillingness to re-admit the Appellant, [REDACTED] Hospital admitted him as a "social admit," signifying that he did not require hospital treatment but could not be discharged.
7. On [REDACTED], 2023, the Appellant was transferred to Silverlake Hospital.
8. On [REDACTED] 2023, the Appellant's [REDACTED] requested this hearing to contest the Facility's unwillingness to re-admit the Appellant.
9. The Appellant remains at Silverlake Hospital pending the outcome of this appeal.
10. The Appellant has neither a medical nor [REDACTED] need for continued hospitalization.
11. A hearing was held on [REDACTED] and [REDACTED] 2023, to allow Silverlake Hospital time to address some of the Facility's concerns regarding the administration [REDACTED] and [REDACTED] doses of [REDACTED]. During the [REDACTED] hearing date, the Facility was verbally directed to

readmit the Appellant to the next available semi-private bed. This written decision is the final administrative determination regarding the discharge appeal.

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

Transfer and discharge rights of residential health care facility residents are set forth in Department regulations at 10 NYCRR § 415.3(i) and federal regulations at 42 CFR § 483.15(c). Department regulations at 10 NYCRR § 415.3(i)(1)(i) describe the permissible bases upon which a residential health care facility may transfer or discharge a resident. When a residential health care facility determines that discharging a resident is appropriate because the safety of individuals in the facility is endangered, it must ensure that the resident's clinical record contains complete documentation made by a physician. 42 CFR § 483.15(c)(2)(ii)(B); 10 NYCRR § 415.3(i)(1)(ii)(b).

The residential health care facility must notify the resident and a designated representative, if any, of the transfer or discharge and the reasons for the move in writing. Such notice must be provided no later than the date on which a determination was made to transfer or discharge the resident. 42 CFR §§ 483.15(c)(3)&(4); 10 NYCRR §§ 415.3(i)(1)(iii)-(iv). The residential health care facility must prove that the discharge was necessary, and that the discharge plan is appropriate. 10 NYCRR § 415.3(i)(2)(iii); State Administrative Procedure Act § 306(1).

DISCUSSION

The Appellant was transferred to [REDACTED] Hospital on [REDACTED] 2023, after he injured another resident at the Facility. The Appellant's family was informed of his transfer to [REDACTED] Hospital, but the Facility never provided the required written notification of any intention to discharge and not re-admit him. Instead, the Facility advised [REDACTED] Hospital that it would not allow the Appellant to return and had already ceased its search (commenced one day before his hospital transfer) for a suitable discharge location upon transferring the Appellant to the hospital. The Facility was required to provide the Appellant and his representative with a discharge notice on the date of its determination not to re-admit him. 10 NYCRR § 415.3(i)(1)(iv).

The Facility has adopted the position that the Appellant is a danger to himself and/or others. When a Facility has determined to discharge a resident because the safety of individuals in the facility is endangered, it must ensure complete documentation made by a physician. 10 NYCRR § 415.3(i)(1)(ii)(b); *see also* 42 CFR § 483.15(c)(2)(ii)(B). No such documentation was provided for this hearing.

During the February 13 portion of the hearing, the Facility expressed concerns regarding medication administered at Silverlake Hospital, specifically, [REDACTED], [REDACTED], and [REDACTED] all of which the Facility's Medical Director contended the Facility would be unable to continue administering. The hearing was adjourned while Silverlake Hospital attempted to discontinue or at least taper off, those medications.

When the hearing continued on March 14, Karli Kohut, President and CEO of Silverlake Hospital and a nurse who has observed the Appellant's treatment, testified that the hospital had ceased administering [REDACTED] to the Appellant, administered [REDACTED] orally on an as needed basis only, and had decreased the Appellant's dose of [REDACTED] by half to 2.5 mg. The

Facility contended that the onus was on Silverlake Hospital to taper the Appellant off from [REDACTED] completely, even though the Facility itself had administered that medication to the Appellant before his transfer (information which the Facility had never provided for this hearing), and even though both parties agreed that eliminating [REDACTED] from the Appellant's medication regimen should be done very gradually. Although the Facility also took issue with the hospital's administration [REDACTED] Ms. Kohut affirmed that the medication was administered when needed for [REDACTED] which is an accepted clinical indication for its use, contrary to the Facility's assertion that [REDACTED] is not clinically indicated for [REDACTED]. Furthermore, Ms. Kohut confirmed that [REDACTED] was not crucial for the Appellant's health or safety and was not regularly given to the Appellant.

Ms. Kohut also observed the Appellant's behavior and reviewed his medical needs. It is her opinion that the Appellant has no need for continued hospitalization and should return to the Facility. She found the Appellant to be alert and not [REDACTED] with his current medication regimen. The Appellant knows his name, but shows [REDACTED] consistent with his [REDACTED] diagnosis. He walks with supervision, and has a wander guard for fall precautions, but can eat independently. With respect to the Facility's concerns about the Appellant's behavior, Ms. Kohut testified that the Appellant has shared a room with another patient for approximately three weeks without incident.

Silverlake Hospital is an acute care hospital. The evidence establishes that the Appellant has no need for continued hospitalization. As facilities were advised in a "Dear Administrator" Letter dated September 23, 2015 (DAL-NH 15-06), and more recently, on August 19, 2019 and October 11, 2022 (DAL-NH 19-07), residential health care facilities may not resort to hospitals as final discharge locations for residents with episodes of acting out behavior who are sent to the

hospital for treatment. In addition to completely ignoring notice requirements established under both state and federal regulations, the Facility's discharge decision contravenes the applicable regulations and written Department guidance and is inconsistent with the medical evidence.

The Facility's representative and Medical Director expressed concerns during the hearing about the risks of re-admitting the Appellant. This decision is neither a guarantee nor a prognostication that the Appellant will not exhibit inappropriate outbursts again, or require hospitalization or immediate removal for an emergency evaluation. This decision is only intended to enforce the rights of the Appellant, given his present medical situation, pursuant to existing regulations and Department guidance. The Respondent offered no evidence from any physician to controvert the medical opinion of the physicians at Silverlake Hospital that return to the facility is now medically appropriate.


As stated at the hearing, this decision does not prevent the Facility from transporting the Appellant to a hospital's emergency department for an evaluation if he has future outbursts or exhibits other troubling behaviors. However, for the present, the Appellant must be accepted back to the nursing home. If, upon readmitting the Appellant, the Facility is unable or unwilling to continue to provide care for this resident, it has the obligation to develop an appropriate discharge plan and properly issue the discharge notice required by both state and federal regulations stating permissible grounds for discharge.

DECISION AND ORDER

The Grand at Guilderland has not established that its determination to discharge the Appellant was correct and that the discharge plan is appropriate.

The Grand at Guilderland is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the facility, pursuant to 10 NYCRR § 415.3(i)(2)(i)(d).

Dated: March 15, 2023
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge