

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan
SAPA File
BOA by scan



Department of Health

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

April 11, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o New Riverdale Rehabilitation & Nursing
641 West 230th Street
Bronx, New York 10463

Abdul Abubaker, NHA
New Riverdale Rehabilitation & Nursing
641 West 230th Street
Bronx, New York 10463

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

Riverdale Nursing Home

Respondent,

to discharge her from a residential
health care facility.

COPY

**DECISION
AND
ORDER**

#DA23-5978

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: WebEx videoconference

Hearing Date: April 7, 2023

Parties: Riverdale Nursing Home
641 West 230th Street
Bronx, New York 10463
By: Abdul-Razak Abubakar, Administrator

██████████
Pro Se

JURISDICTION

Riverdale Nursing Home (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 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: Abdul Wahab Abubakar, Social Worker

Facility exhibits: 1-4, 6, 7

Appellant witnesses: ██████████ Appellant

Appellant exhibits: None

The notice of hearing and the accompanying cover letter were marked as ALJ Exhibit I. A digital recording of the hearing was made. (42:23 in duration.)

ISSUES

Has Riverdale Nursing Home established that its determination to discharge the Appellant was correct and that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a ██████-year-old female who was admitted to the Facility on ██████████, 2021 from ██████████ Hospital for rehabilitation after undergoing ██████████ surgery. (Exhibit 1; Recording @ 29:58.)

2. The Appellant is diagnosed with ██████████ pain, pain in her ██████████ ██████████) in the ██████████ ██████████ and pressure ulcers on her ██████████, and her ██████████. (Exhibit 1.)

3. On [REDACTED] 2023, a Facility nurse and security officer demanded that the Appellant empty the contents of her bag, which contained one pack of cigarettes, a lighter, and [REDACTED]. (Exhibit 6; Recording @ 13:12.)
4. On [REDACTED] 2023, a nurse discovered the Appellant smoking a cigarette in her room. (Exhibit 6.)
5. By notice dated [REDACTED] 2023, the Facility determined to discharge the Appellant on [REDACTED] 2023 to her apartment in the [REDACTED] on the grounds that she is endangering the safety of other individuals residing in the facility. (Exhibit 2.)
6. The Appellant's record does not contain documentation made by a physician regarding the basis for discharge.
7. On [REDACTED], 2023, the Appellant requested this hearing. She remains at the Facility pending the outcome of this 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). 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

prove that the discharge was necessary, and that the discharge plan is appropriate. 10 NYCRR § 415.3(i)(2)(iii).

DISCUSSION

The Facility has determined that the Appellant's discharge is necessary because she is endangering the safety of other individuals residing in the facility by smoking in her room and by using [REDACTED] on the premises. (Exhibit 2.) At the hearing, Abdul-Razak Abubakar, the Facility's Administrator, argued that the Appellant's [REDACTED] use was unhealthy, referring to the danger that her [REDACTED] use posed to the Appellant's own health. (Recording @ 12:19, 36.) Those concerns are unrelated to the stated basis for discharging the Appellant.

The Appellant was caught smoking in her room. (Recording @ 13:15, 33:06.) According to the Administrator, the Appellant's smoking was incessant and posed a safety issue for oxygen-dependent residents in the facility. (Recording @ 34:18, 36:16.) However, the Facility presented evidence of only one smoking incident, which occurred in her room. (Exhibit 6.) Facility Social Worker, Abdul Wahab Abubakar, pointed out that the Appellant's smoking violated the Facility's smoking policy, which requires residents to smoke in designated smoking areas and prohibits smoking in residents' rooms. (Recording @ 19:37.) The Appellant conceded that she had smoked cigarettes in her room before the [REDACTED] discharge notice was handed to her, but insisted that she stopped smoking in her room upon receiving the discharge notice. (Recording @ 10:35, 33:40, 37:15.)

The Facility was required to ensure that the Appellant's records contain complete documentation created by a physician regarding its determination. 42 CFR § 483.15(c)(2)(ii)(B); 10 NYCRR § 415.3(i)(1)(ii)(b). The Appellant's records contain no documentation at all made by a physician or signed by a physician in support of the stated basis for discharge. The Facility

offered only Physician's Orders describing the Appellant's medication, medical care, and laboratory test referrals. That document demonstrates the Appellant's continued need for the services provided by a nursing home, but does not mention the Appellant's smoking and how it endangers the safety of others. (Exhibit 4.) The Facility's Administrator and Social Worker both explained that the Facility consults a physician only before a resident is actually discharged but acknowledged that no physician determined that the Appellant's smoking endangers the safety of others. (Recording @ 24:59, 27:00.) The Facility has failed to establish the stated basis for discharge.

With respect to the discharge plan, the Facility proposed to discharge the Appellant to her [REDACTED] [REDACTED] apartment, which is located in a building without elevators. (Recording @ 10:20, 36:33.) The Facility's Administrator explained that the Appellant's apartment is the only location available to the Appellant, but offered to discharge her elsewhere if the Appellant identifies an alternative. (Recording @ 36:39.)

The Appellant currently ambulates with a wheelchair, and is receiving physical therapy five times per week for improved mobility. (Recording @ 29:34, 31:40.) In addition, she receives daily wound care from nursing staff for cleaning and dressing of her pressure ulcers. She is not able to perform wound care independently for the pressure ulcers on her [REDACTED] and requires continued physical therapy. (Recording @ 30:58.)

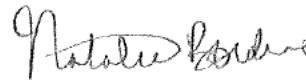
Administrator Abubakar explained that the Facility would arrange for home care and other services for the Appellant before the actual discharge date. (Recording @ 39:19.) However, the record fails to show that the Facility considered the Appellant's limited mobility and how that would affect her access to outpatient medical and rehabilitative care in the community, or even access to her [REDACTED] apartment, upon discharge. The Facility's

proposed discharge plan fails to address the Appellant's medical needs and how these will be met after discharge. 10 NYCRR § 415.3(i)(1)(vi). The Facility's determination to discharge the Appellant is not sustained.

DECISION

Riverdale Nursing Home has not established that its determination to discharge the Appellant was correct and that the discharge plan is appropriate.

Dated: April 11, 2023
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge