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Department of Health

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

June 20, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o A. Holly Patterson Extended
Care Facility
875 Jerusalem Avenue
Uniondale, New York 11553

Janet Serva, SW
A. Holly Patterson Extended
Care Facility
875 Jerusalem Avenue
Uniondale, New York 11553

Barbara Phair, 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,

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

A Holly Patterson Extended Care Facility,

Respondent,

to discharge Appellant from a residential health care facility.

COPY

DECISION

Before: Rayanne L. Babich
Administrative Law Judge (ALJ)

Date: June 6, 2023

Held at: New York State Department of Health
Webex videoconference

Parties: ██████████ Appellant
c/o A Holly Patterson Extended Care Facility
875 Jerusalem Avenue
Uniondale, New York 11553
Pro Se

A Holly Patterson Extended Care Facility
875 Jerusalem Avenue
Uniondale, New York 11553
By: Barbara Phair, Esq.

JURISDICTION

By notice dated ██████████ 2023, A Holly Patterson Extended Care Facility, a residential health care facility (Facility), determined to discharge ██████████ (Appellant), from care in its Facility. The Appellant appealed the proposed discharge.

RECORD

ALJ Exhibits [Ex]: I – Notice of Hearing, [REDACTED], 2023
II – Notice of Discharge, [REDACTED] 2023

Facility Exhibits: 1 – Physician Progress Note, [REDACTED], 2023
2 – Physical Therapy Discharge Summary, [REDACTED] 2023
3 – Hospital Records, [REDACTED], [REDACTED] 2023

Appellant Exhibits: None

Facility Witnesses: Rupal Shah, M.D., Facility physician
Janet Serva, Facility Social Worker
Bill Schade, Director of Physical Therapy for the Facility
Kathy Pinckney, RN, for the Facility

Appellant Witness: [REDACTED] [REDACTED]

The hearing was digitally recorded. [R. 1:29:03.]

SUMMARY OF FACTS

1. The Appellant was admitted to the Facility on [REDACTED] 2023 for short-term rehabilitation services following a hospitalization. The Appellant completed physical therapy and was discharged from rehabilitation services on [REDACTED] 2023. [Ex 2; R. 23:06.]
2. The Appellant is ambulatory and independent in all activities of daily living. [Ex 2; R. 29:44, 39:51.]
3. On [REDACTED] 2023, Rupal Shah, M.D., Facility physician, evaluated the Appellant and documented in his clinical record that the Appellant is medically cleared for discharge to a shelter. [Ex 1; R. 19:49.]
4. On [REDACTED] 2023, the Facility issued a Notice of Discharge to the Appellant, which stated that the discharge is necessary because the Appellant's health has "improved sufficiently so that [he] no longer requires the services provided by the facility." The proposed discharge location stated in the Notice of Discharge is the [REDACTED] County Department of

Social Services, [REDACTED], located at [REDACTED],
[REDACTED] New York. [Ex II.]

ISSUES

Has the Facility met its burden of proving that the discharge is necessary and that the discharge plan is appropriate?

APPLICABLE LAW

1. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(i), which provides, in pertinent part:
 - (1) With regard to the transfer or discharge of residents, the facility shall:
 - (i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility.
 - (a) the resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that:
 - (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.
2. Before discharging a resident, the Facility must record the reasons in the resident's clinical record. 10 NYCRR 415.3(i)(1)(iii)(b).
3. If the Facility seeks to discharge a resident because the resident's health has improved sufficiently so that he no longer needs the services provided by the facility pursuant to 10

NYCRR 415.3(i)(1)(a)(2), documentation in the clinical record shall be made by the resident's physician. 10 NYCRR 415.3(i)(1)(ii)(a).

4. The Facility has the burden of proving that the "discharge or transfer is/was necessary and the discharge plan appropriate." 10 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

The Facility is seeking to transfer the Appellant because his health has improved so that he no longer requires the services provided by the Facility. [Ex II.] The Appellant has successfully completed rehabilitation services and is independent in ambulation and activities of daily living.

[Ex 2.] The Appellant objected to the discharge because he has upcoming medical appointments for his [REDACTED] that will require on-going care and he still needs physical therapy because he uses a wheelchair. [R. 1:00:48, 1:06:00.]

Facility physician, Rupal Shah, M.D., testified that the Appellant no longer requires the services provided by the Facility because he has completed physical therapy, and all follow up medical care can be provided in the community with his established medical providers. [R. 19:49, 20:38.]

Director of Physical Therapy, Bill Schade, testified that the Appellant completed a course of physical therapy beginning [REDACTED] 2023 to address his balance, ability to transfer, navigating stairs and ambulating with a cane. [Ex 2; R. 23:16.] The Appellant met all treatment goals and was discharged from physical therapy on [REDACTED] 2023. [Ex 2; R. 29:44.] Mr. Schade testified that the Appellant remains independent but often uses a wheelchair for convenience because the Facility is large and like many other residents, the wheelchair helps the Appellant carry his

belongings. [R. 29:59.] However, the Appellant does not require a wheelchair and has also been observed engaging in exercise activities independently. [Ex 2; R. 29:04.]

The Appellant's independence was confirmed by Kathy Pinckney, a Registered Nurse for the Facility who is familiar with the Appellant's care needs. Ms. Pinckney testified that the Appellant does not require assistance with activities of daily living and that he has been observed ambulating on his own without using a wheelchair. [R. 38:12.] The Facility has established that the Appellant's condition has improved so that he no longer requires the services provided by the Facility.

The proposed transfer location is to the [REDACTED] County Department of Social Services, [REDACTED] (DSS), located in [REDACTED] New York. [Ex II.] The Facility determined that the Appellant's medical needs can be met in the community. [R. 44:38.] The Appellant objects to the transfer because he does not want to enter a shelter and plans to find assisted living housing. [R. 1:08:11, 1:08:46.]

Unit Social Worker for the Facility, Janet Serva, testified that she has attempted to work with the Appellant to develop a discharge plan, but he has refused to participate. [R. 43:32.] Ms. Serva explained that when she or other social work staff at the Facility entered the Appellant's room or tried to discuss discharge planning, he refused to speak with them or provide information to assist with planning and ordered them to exit his room. [R. 44:22, 47:16.]

Dr. Shah documented in the Appellant's clinical record at the Facility that he has been medically cleared for discharge to a shelter. [Ex 1.] The Appellant is independent, can manage his own needs and affairs, and follow up with his medical providers in the community. [R. 20:23.] Ms. Serva testified that DSS has resources to assist the Appellant with obtaining permanent housing. [R. 44:56.] Although the Appellant testified that he plans to seek assisted

living housing, he made no efforts to secure placement or allow Ms. Serva or other social work staff to facilitate that process. [R. 1:08:15.]

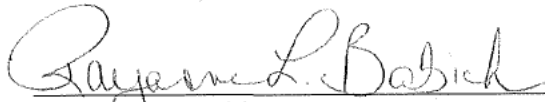
The Facility has met its burden to prove that the discharge is necessary and that the proposed discharge location is appropriate because the Appellant no longer requires the services provided and he is independent.

ORDER

A Holly Patterson Extended Care Facility has met its burden to prove that its determination to discharge the Appellant is necessary, and that discharge to [REDACTED] County Department of Social Services, [REDACTED] is appropriate.

1. The Facility is authorized to transfer the Appellant pursuant to the Notice of Discharge dated [REDACTED] 2023.
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: June 20, 2023
Albany, New York



Rayanne L. Babich
Administrative Law Judge

TO:

■■■■ Appellant
c/o A Holly Patterson Extended Care Facility
875 Jerusalem Avenue
Uniondale, New York 11553

Janet Serva, Facility Social Worker
A Holly Patterson Extended Care Facility
875 Jerusalem Avenue
Uniondale, New York 11553

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