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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 29, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o The Riverside
150 Riverside Drive
New York, New York 10024

Allison Bellin, DSW
The Riverside
150 Riverside Drive
New York, New York 10024

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: nm
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

In the Matter of an Appeal, pursuant to 10 NYCRR 415.3, by

██████████

Appellant,

DECISION

from a determination by

The Riverside,

Respondent,

to discharge Appellant from a residential health care facility.

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

Dates: June 12, 2023
June 22, 2023

Held at: New York State Department of Health
Webex videoconference

Parties: ██████████ Appellant
c/o The Riverside
150 Riverside Drive
New York, New York 10024
Pro se

The Riverside
150 Riverside Drive
New York, New York 10024

By: Allison Bellin, Director of Social Work

JURISDICTION

By notice dated ██████████ 2023, The Riverside, a residential health care facility (Facility), determined to discharge ██████████ (Appellant), from care in its Facility. The Appellant appealed the proposed discharge on ██████████ 2023. The hearing was scheduled for June 12, 2023

but was adjourned to June 22, 2023 upon the Appellant's request because the Facility had not provided exhibits to the ALJ or the Appellant until the hour prior to the hearing.

RECORD

- ALJ Exhibits [Ex]: I – Notice of Hearing, [REDACTED] 2023
II – Notice of Discharge, [REDACTED] 2023
III – Admission Record
- Facility Exhibits: 1 – Physical Therapy Medical Records, [REDACTED] 2023
2 – Occupational Therapy Medical Records, [REDACTED] 2023
3 – Physician Progress Note, [REDACTED] 2023
4 – Physician Progress Note, [REDACTED], 2023
- Appellant Exhibit: None
- Facility Witnesses: Allison Bellin, Director of Social Work
Nathaniel Patillo, Assistant Director of Nursing
[REDACTED] Social Worker
Leah Creash, Director of Rehabilitation
- Appellant Witness: [REDACTED]

The hearings were digitally recorded. Citations from June 12, 2023 [22:58.] are cited as “R1” and from June 22, 2023 [1:20:42.] are cited as “R2.”

SUMMARY OF FACTS

1. The Appellant was admitted to the Facility on [REDACTED], 2022 for short-term rehabilitation services after a hospitalization following surgery on her [REDACTED]. [Ex III, 3.]
2. The Appellant received two courses of physical therapy from [REDACTED] 2022 to [REDACTED] 2022 and from [REDACTED] 2023 to [REDACTED] 2023. She received two courses of occupational therapy from [REDACTED], 2022 to [REDACTED] 2022 and [REDACTED] 2023 to [REDACTED] 2023. The Appellant has met her rehabilitation treatment goals. [Ex III, 1-4; R2 29:17, 31:49, 33:13.]

3. Director of Rehabilitation Services for the Facility, Leah Creash, determined the Appellant is “modified independent” in her activities of daily living (adls). Modified independent means that the Appellant can complete her adls on her own but may require more time. The Appellant ambulates independently and uses a cane as needed. [Ex 1-4; R2 35:53, 37:03.]
4. Prior to her hospitalization, the Appellant was renting a room from a homeowner in the community. The Appellant has a [REDACTED] that the homeowner is caring for while she is at the Facility. [R2 43:23, 59:53.]
5. On [REDACTED], 2023, the Facility issued a Notice of Discharge to the Appellant which stated that her “health has improved significantly so [she] no longer needs the services provided by the facility.” [Ex II.]
6. The Facility has proposed to discharge the Appellant to [REDACTED] [REDACTED] located at [REDACTED]. The shelter has accepted the Appellant. [Ex II, 4; R2 20:56; 45:26.]
7. Facility physician, Okechukwu Igwe, M.D., documented in the Appellant’s medical record that the Appellant can be discharged to a shelter as there are no acute medical issues occurring. [Ex 3.]
8. Facility physician at the Facility, Muhammad Kamal, M.D., documented in the Appellant’s medical record that the Appellant is medically stable to be discharged to a community location, including a shelter. [Ex 4.]
9. The Appellant remains at the Facility pending the outcome of the appeal.

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 she no longer needs the services provided by the facility pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2), documentation in the clinical record shall be made by the resident's physician, and if appropriate, by the resident's interdisciplinary team. 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 discharge the Appellant because her health has improved so that she no longer requires the services provided by the Facility. [Ex II.] The Facility determined that the Appellant has successfully completed rehabilitation services, is independent in ambulation, and performs her activities of daily living. [Ex II; R2 29:17.] The Appellant objected to the discharge because she needs more therapy. [R2 52:48.]

Two attending physicians at the Facility have determined that the Appellant is appropriate for discharge. Both Okechukwu Igwe, M.D., and Muhammad Kamal, M.D., have documented in the Appellant's medical record that the Appellant is medically stable for discharge. [Ex 3, 4.] Dr. Igwe documented that he observed the Appellant ambulate without assistance. [Ex 3.] Dr. Kamal further documented that the Appellant does not require further physical or occupational therapy or assistance with adls. [Ex 4.]

Director of Rehabilitation Services, Leah Creash, testified that the Appellant had previously reached her maximum potential for physical and occupational therapy and was discharged on [REDACTED], 2022. [R2 31:49, 33:13.] Ms. Creash explained that as part of a routine rehabilitation review, the Facility determined the Appellant could continue to benefit from physical therapy to improve her core strength and balance and services were restarted on [REDACTED] [REDACTED] 2023. [Ex 1; R2 42:00.] Ms. Creash also testified that in preparation of a pending discharge, occupational services were restarted on [REDACTED] 2023 to ensure Ms. Creash remained at her highest functional level. [R2 42:14.] Ms. Creash provided her opinion that although physical and occupational therapy services are scheduled to end the day after the hearing on [REDACTED], 2023, the Appellant remains independent, ambulates without assistance but may use a cane, and can complete her adls. [R2 37:03.] Additionally, Assistant Director of Nursing, Nathaniel Patillo,

testified that he supervises the unit on which the Appellant is placed and that she does not require assistance from the nursing staff. [R2 10:10.]

The proposed discharge location is the [REDACTED] located at [REDACTED]. [Ex II.] Dr. Igwe and Dr. Kamal, along with the Facility's interdisciplinary team, determined that the Appellant's medical needs can be met at a shelter in the community. [Ex 3, 4; R2 38:26.] The Appellant objected to the discharge because renting a room from a homeowner in the community is the only suitable discharge location for herself and her [REDACTED]. [R2 52:18.]

The Appellant's assigned social worker, [REDACTED] [REDACTED] testified that the Facility offered discharge planning options that included assisted living facilities, adult homes, a return to her previously rented room, assistance with housing service applications, and assistance with locating a new room to rent. [R2 16:55, 1931.] The Appellant declined all these options and stated that she cannot return to her former residence but refused to disclose the reason. [R2. 16:55.] Mr. [REDACTED] arranged for a representative from an assisted living agency to meet with the Appellant, but upon the representative's arrival, she refused to consider any of the locations offered or complete an application. [R2 18:58.] Mr. [REDACTED] testified that the Appellant has been making calls and visiting locations to locate a room to rent, but she has been unsuccessful. [R2 17:55.]

The Director of Social Work at the Facility, Allison Bellin, testified that after the Appellant declined all discharge planning options offered by her assigned social worker, the only remaining option was a referral to a shelter. [R2 45:26.] An application was submitted on [REDACTED] [REDACTED] 2023, and an updated application was submitted on [REDACTED] 2023. [R2 20:18, 45:37.] Ms.

Bellin testified that she received an email on [REDACTED] 2023 confirming that the Appellant has been accepted by the shelter. [R2 46:23.]

The Appellant testified that the only acceptable discharge location will be a home where she can rent a room and is [REDACTED] to accept her [REDACTED] [R2 59:28.] She also testified that she has been responding to advertisements for rooms to rent but has not found one to accommodate her. [R2 59:28, 1:10:42.] However, remaining at the Facility while she continues a search for a room to rent is not reasonable. The Appellant's needs can be met at the shelter. She is independent and will have follow up medical care from her providers in the community. [Ex 3, 4; R2 21:57.] She can continue to identify a room to rent once she is discharged to the shelter.

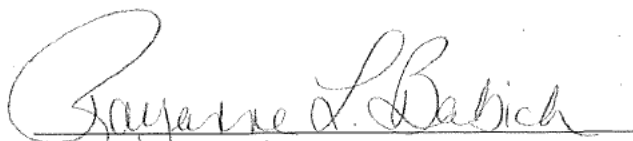
The Facility has established that the Appellant no longer requires the services provided by the Facility, and that the shelter is an appropriate discharge location.

ORDER

The Riverside met its burden to prove that its determination to discharge the Appellant is necessary, and that discharge to the [REDACTED], [REDACTED] is appropriate.

1. The Facility is authorized to discharge 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 29, 2023
Albany, New York


Rayanne L. Babich
Administrative Law Judge

TO:

██████████ Appellant
c/o The Riverside
150 Riverside Drive
New York, New York 10024

Allison Bellin, Director of Social Work
The Riverside
150 Riverside Drive
New York, New York 10024