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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

August 1, 2023

CERTIFIED MAIL/RETURN RECEIPT

Barbara Stegun Phair, Esq.
3 Dakota Drive
Lake Success, New York 11042

Denise McCauley, Hospital Supervisor
Samaritan Hospital
2215 Burdett Avenue
Troy, New York 12180



RE: In the Matter of [REDACTED] [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

██████████

Appellant,

from a determination by

The Grand at Guilderland,

Respondent,

to discharge him from a residential
health care facility.

COPY

**DECISION
AFTER
HEARING**

#DA23-6093

Hearing before:

John Harris Terepka
Administrative Law Judge
July 31, 2023
By videoconference

Parties:

The Grand at Guilderland
426 State Route 146
Altamont, New York 12009
alounsbury@thegrandhealthcare.com
By: Barbara Stegun Phair, Esq.
3 Dakota Drive
Lake Success, New York 11042
bphair@abramslaw.com

By: ██████████
██████████
██████████
██████████

Also appearing:

Samaritan Hospital
2215 Burdett Avenue
Troy, New York
By: Denise McCauley, hospital supervisor
denise.mccauley@sphp.com

JURISDICTION

The Grand at Guilderland (the Respondent), a residential health care facility (RHCF) subject to Article 28 of the Public Health Law, discharged ██████████ ██████████ (the Appellant) from care and treatment in its nursing home. The Appellant appealed the discharge to the New York State Department of Health pursuant to 10 NYCRR 415.3(i). The Respondent has the burden of proving that the discharge was necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

SUMMARY OF FACTS

1. Respondent The Grand at Guilderland is a residential health care facility, specifically a nursing home within the meaning of PHL 2801.2 and 10 NYCRR 415.2(k), located in Altamont, New York.
2. Appellant ██████████ ██████████ age ██████████ was admitted as a resident in ██████████ 2022 with diagnoses that include ██████████ with ██████████ ██████████ ██████████. His ██████████ is designated as a responsible party. (Exhibit 2.)
3. On ██████████ 2023, the Respondent transferred the Appellant to Samaritan Hospital, in Troy, New York, because he was ██████████ aggressive with residents and staff. (Exhibit 5, page 1; Exhibit 9.)
4. Samaritan Hospital is a general hospital within the meaning of PHL 2801.10. The hospital evaluated the Appellant and determined that he does not require inpatient medical or psychiatric care at a general hospital. (Exhibit A.) Samaritan Hospital advised the Respondent that the Appellant was ready to return to the Respondent's care. The Respondent refuses to readmit him.

5. At no time did the Respondent provide to the Appellant or his ██████████ designated representative or other family member a written notice of discharge including the grounds for discharge, discharge location, the Appellant's appeal rights, and the other information required by 10 NYCRR 415.3(i)(1)(iii)&(vi).

6. The Respondent has not developed an appropriate post-discharge plan of care for the Appellant that addresses his long-term care and medical needs and how they will be met after discharge, as required by 10 NYCRR 415.3(i)(1)(vi).

7. The Respondent proposes to leave the Appellant at Samaritan Hospital, where he has not been admitted because he does not require hospital care.

ISSUES

Has the Respondent established that the Appellant's discharge from The Grand at Guilderland is necessary and that the discharge plan is appropriate?

HEARING RECORD

Respondent witnesses:	Matthew Blando, MD ██████████ charge nurse Amber Lounsbury, director of nursing ██████████ social work
Respondent exhibits:	1-9
Appellant witnesses:	Debra House, RN manager & care coordination director, Samaritan Hospital Denise McCauley, care coordinator, Samaritan Hospital
Appellant exhibits:	A
ALJ exhibit:	ALJ I (hearing notice)

The hearing was held and recorded by Webex videoconference. (3h46m.) The Appellant was not present at the hearing but his responsible parties according to facility.

DISCUSSION

A residential health care facility (RHCF), or nursing home, is a residential facility providing nursing care to sick, invalid, infirm, disabled or convalescent persons who need

regular nursing services or other professional services but who do not need the services of a general hospital. PHL 2801; 10 NYCRR 415.2(k).

Transfer and discharge rights of nursing home residents have been codified in Public Health Law 2803-z and set forth in Department regulations at 10 NYCRR 415.3(i) and federal regulations at 42 CFR 483.15(c). They include the requirement that before it transfers or discharges a resident, the nursing home must notify the resident and designated representative, if any, and, if known, family member of the resident of the transfer or discharge and the reasons for the move in writing. The required written notice must include, among other things:

- the reason for the transfer or discharge
- the specific regulations that support the action
- the effective date of the transfer or discharge
- the location to which the resident will be transferred or discharged
- a statement that the resident has the right to a hearing to appeal the discharge
- the name, address and telephone number of the State long term care ombudsman

10 NYCRR 415.3(i)(1)(iii),(iv)&(v); 42 CFR 483.15(c)(3)&(5).

The Respondent has now, for the second time with this resident, ignored the discharge and notice requirements of New York State law and both state and federal regulations. Department policy disseminated to nursing home administrators by "Dear Administrator Letter" (DAL) explicitly confirms that these requirements are applicable if a nursing home does not want to readmit a resident who has been hospitalized:

Q: If a resident is sent to the hospital due to the resident's clinical or behavioral status that endangers the health and/or safety of other individuals in the facility, do I need to issue a Discharge/Transfer Notice?

A: A hospital is not an appropriate discharge location. Admission assessments are key to ensuring the facility can care for the residents admitted. If there is evidence a facility cannot meet the resident's needs, or the resident poses a danger to the health and safety of his/herself or others, the facility must follow all the requirements as they apply to discharge including the basis

for discharge, provide notice to the resident, his/her representative and the LTCOP, reason for discharge, discharge location and appeal rights information. A facility's determination not to permit a resident to return must not be based on the resident's condition when originally sent to the hospital. DAL-NH 19-07, August 20, 2019.

In ██████████ 2023 the Respondent sent the Appellant to a hospital in ██████████ without issuing a discharge notice, and then refused to readmit him. In ██████████ 2023, after a hearing on that discharge, the Department of Health directed the Respondent to readmit him, specifically noting the Respondent's failure, in violation of PHL 2803-z, 10 NYCRR 415.3(i) and 42 CFR 483.15(c), to issue an appropriate discharge notice or develop an appropriate discharge plan. (Matter of ██████████ ██████████ The ██████████, DOH administrative hearing decision ██████████, dated ██████████ 2023.) The Respondent has now again sent the Appellant to a hospital emergency room with no intention of readmitting him, again without issuing a discharge notice or developing a discharge plan.

The Respondent claims that the safety of individuals in the facility is endangered by the Appellant, that it cannot safely monitor his behavior and meet his care needs, and that it is unable to provide the care and supervision he requires. When discharge is alleged to be necessary due to the endangerment of the health or safety of other individuals in the facility, the resident's clinical record must include complete documentation made by a physician. 10 NYCRR 415.3(i)(1)(ii)(b); 42 CFR 483.15(c)(2)(ii)(B). The facility is also required to document in the resident's clinical record the risks to the resident or others if the resident were to remain in the facility. PHL 2803-z(e). When discharge is alleged to be necessary because the resident's needs cannot be met after reasonable accommodation in the facility, the resident's clinical record must include complete documentation made by the resident's physician. 10 NYCRR 415.3(i)(1)(ii)(a); 42 CFR 483.15(c)(2)(ii)(A). The

Respondent has failed to produce documentation to show compliance with these requirements. A progress note by a facility physician, dated ██████████ 2023, characterizes the Appellant's behavior as ██████████ with staff but does not state the Respondent is unable to meet his care needs and does not identify any risks to the resident or others if he remains in the facility. It instead documents the physician's ongoing plan for managing the Appellant's behavior. (Exhibit 1.)

The Appellant has been evaluated at Samaritan Hospital. It is the opinion of the hospital physicians and staff that he does not require hospital admission for either medical or ██████████ reasons, and that a nursing home is an appropriate placement that can and should be expected to meet his care needs. (Exhibit A; Exhibit 8.) The Respondent has failed to meet its burden of documenting or proving otherwise.

The Respondent claims that it cannot readmit the Appellant because the hospital has given him medication, such as ██████████ and ██████████ that cannot be administered in a nursing home. It presented no authority to support this claim that it is not allowed to administer or taper the resident off of these or any other medically necessary medications at a nursing home to the extent they are appropriately ordered, monitored and managed by a physician. Contrary to the Respondent's claims, federal regulations at 42 CFR 483.12 and 483.45 do not prohibit a nursing home from administering medication when medically appropriate and not used for the purpose of inappropriate restraint.

The Respondent's arguments about medication management also do not address or excuse the Respondent's obligation to manage resident behaviors by other means, such as increased supervision and monitoring. As Samaritan Hospital care coordination director Debra House testified, ██████████ is a very common diagnosis,

for which nursing homes often must place a resident on “1 to 1” supervision until another long term care placement can be found. (Recording at 3h19m.) The Respondent’s attempts to manage behavior or implement more secure supervision in the months between its initial attempt in ██████████ 2023 to discharge the Appellant and this second attempt in ██████ have not included this form of supervision.

In addition to ignoring all of the notice requirements and failing to document grounds for discharge as required, the Respondent failed to conduct and document appropriate discharge planning. When a resident is hospitalized, the nursing home is required to establish and follow a written policy that includes readmission to the facility if the resident requires nursing home care. 10 NYCRR 415.3(i)(3); 42 CFR 483.15(e). If the resident is not appropriate for return to the nursing home, the nursing home is required to provide sufficient preparation and orientation to ensure safe and orderly transfer or discharge in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and to provide a discharge summary pursuant to 10 NYCRR 415.11(d). 10 NYCRR 415.3(i)(1)(vi).

Discharge to a general hospital does not meet the nursing home’s responsibility to provide an appropriate discharge plan. Department policy is explicit on this point:

State and Federal regulations require that nursing home residents who are temporarily hospitalized be allowed to return to the facility following hospitalization... Hospitals are not acceptable discharge locations. When sending residents with episodes of acting out behavior to hospitals for treatment, the nursing home is responsible to readmit the resident and/or develop an appropriate discharge plan. In these cases, the hospital is not considered to be the final discharge location. DAL-NH 15-06, September 23, 2015.

The Respondent has by its own account claimed to know of this resident’s behavioral issues and need to be placed in some other residential care setting since ██████████ 2023 when it first

attempted to discharge him to a hospital instead. The Respondent has failed to develop a plan to address this claimed need.

The Respondent's "best efforts... to secure appropriate placement" as required by PHL 2803-z((1)(b) have consisted largely of attempts to transfer him to other nursing homes with no more authority for the administration of medication than the Respondent has. The Respondent claims the Appellant belongs in a nursing home with a ██████████ unit, but as Ms. House pointed out, a nursing home with a ██████████ unit has no greater ability to administer medications than a nursing home. Ms. House suggested that the Respondent is ██████████ units with ██████████ units, further noting that in the six months she has been aware of this resident (whose first, ██████████ 2023 transfer was made to another hospital in the same system as Samaritan) the Respondent has not attempted any referrals to facilities with ██████████ units. (1h55-58m.)

Shifting a difficult resident off to a general hospital without any discharge plan, and then refusing to take him back, is known as a "hospital dump." Samaritan Hospital is in urgent need of the bed the Appellant unnecessarily occupies and for which it is not being paid because he does not need hospital care. (1h59m.) The Respondent is now proposing that he continue to occupy that bed until the long term care plan that the Respondent claims is required but which the Respondent has failed for over six months to develop, is accomplished. This is an inappropriate, costly, and medically unnecessary solution that places the care management and planning burden on a hospital to which the Appellant has not been admitted. Department and Federal regulations clearly intend that the discharge planning burden remain on the nursing home that undertook his residential care.

The management and care planning issues presented by this resident cannot be solved in this hearing decision, but responsibility for them can be and accordingly is reaffirmed. If the Respondent does not have or is unwilling to devote the resources necessary to provide the care and supervision the Appellant requires, and believes some other placement is appropriate, it has the responsibility to find that placement, develop an appropriate discharge plan for him, and issue the required written notice of discharge.

In the meantime, the Respondent may have to devote extra resources to providing the care and supervision the Appellant needs, but the Respondent is required to do just that unless and until it meets its obligation to develop an appropriate discharge plan that will meet his care needs. The Respondent is directed to readmit the Appellant.

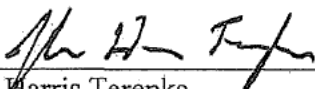
DECISION:

Respondent The Grand at Guilderland has failed to establish that the discharge of Appellant ██████████ ██████████ was necessary and that its discharge plan is appropriate.

The Respondent is directed, pursuant to 10 NYCRR 415.3(i)(2)(i)(d), to readmit the Appellant prior to admitting any other person to The Grand at Guilderland.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York
August 1, 2023



John Harris Terepka
Administrative Law Judge
Bureau of Adjudication