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Department of Health

KATHY HOCHUL
Governor

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

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

January 25, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Garnet Health Medical Center – Catskill
68 Harris Bushville Road
Harris, New York 12742

Ryan Wood, Nursing Home Administrator
Achieve Rehabilitation & Nursing
170 Lake Street
Liberty, New York 12754

Elizabeth Brady, Case Manager
Garnet Health Medical Center - Catskill
68 Harris Bushville Road
Harris, New York 12742

Jeffrey Sherwin, Esq.
Nicholas Berwick Esq.
MacVean Lewis Sherwin & McDermott P.C.
34 Grove Street
P.O. Box 310
Middletown, New York 10940

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

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

COPY

DECISION

██████████,
Appellant,

from a determination by

ACHIEVE REHABILITATION & NURSING;

to discharge her from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Date: January 24, 2024

Parties:

██████████
c/o Garnet Health Medical Center - Catskill
68 Harris Bushville Road
Harris, New York 12742

Achieve Rehabilitation & Nursing
170 Lake Street
Liberty, New York 12754

By: Ryan Wood, Nursing Home Administrator

Garnet Health Medical Center - Catskill

By: Jeffrey Sherwin, Esq.
Nicholas Berwick Esq.
MacVean, Lewis, Sherwin & McDermott, P.C.
34 Grove Street
P.O. Box 310
Middletown, New York 10940

JURISDICTION

On [REDACTED] 2024, Achieve Rehabilitation & Nursing (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), transferred [REDACTED] (the Appellant) to Garnet Health Medical Center – Catskill (Hospital) and thereafter refused to accept her back to the Facility. The Appellant appealed the discharge to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) 415.3(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. A recording of the proceeding was made.

HEARING RECORD

Facility Witnesses: Michelle Orrego, Director of Nursing
Ryan Wood, Nursing Home Administrator
Mary Venturini, Social Work Assistant

Facility Exhibits: 1 – MD email
2 – [REDACTED]

Hospital Witnesses: Elizabeth Brady, Case Management Supervisor

Hospital Exhibits: A – PASRR Level II evaluation
B – Capacity evaluation
C – [REDACTED]/24 Progress note
D – [REDACTED]/24 Progress note

Appellant Witnesses: Appellant

Observer: [REDACTED] Appellant's [REDACTED]

ALJ Exhibits: I – Letter with Notice of Hearing (1/19/24)

SUMMARY

The Appellant was admitted to the Facility in [REDACTED] 2022 for short-term rehabilitation. (Testimony [T.] Orrego.) She was recently transferred to the long-term care unit and, as a result, became [REDACTED] and [REDACTED] on [REDACTED] 2024. (T. Venturini.) The Facility transferred the Appellant to the Hospital for medical and [REDACTED] treatment. The Hospital deemed the Appellant medically and [REDACTED] stable and cleared her for return to the Facility as of [REDACTED] 2024. (T. Brady.) Prior to the hearing, the Facility refused to readmit the Appellant, maintaining that it cannot provide the level of care the Appellant requires. (T. Wood.) At the hearing, the Facility became aware of the results of an independent Preadmission Screening and Resident Review (PASRR) evaluation dated [REDACTED] 2024. (Hospital Ex. A.) The PASRR evaluation determined that the Appellant's "care needs are appropriate to be serviced in any nursing facility setting." (Hospital Ex. A.)

At the conclusion of the hearing, the Facility agreed to accept the Appellant back on [REDACTED] 2024. The Hospital agreed to arrange for the Appellant to receive routine outpatient [REDACTED] treatment, the cost of which (including transportation to and from) is understood to be covered by the Appellant's insurance.


The Appellant was apologetic for her action and expressed great remorse. She testified that she wants to return to the Facility. The Appellant agreed to attend outpatient [REDACTED] treatment sessions and promised to seek help with any [REDACTED] in the future.

This Decision serves as a memorialization of the verbal agreement reached at the conclusion of the hearing.

DECISION

1. Achieve Rehabilitation & Nursing is to readmit the Appellant on [REDACTED] 2024.
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: Albany, New York
January 25, 2024


Tina M. Champion
Administrative Law Judge

TO: [REDACTED]
c/o Garnet Health Medical Center - Catskill
68 Harris Bushville Road
Harris, New York 12742

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