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Department of Health

KATHY HOCHUL
Governor

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

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

March 11, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Williamsville Suburban, LLC
193 South Union Road
Williamsville, New York 14221

Williamsville Suburban, LLC
193 South Union Road
Williamsville, New York 14221

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

[REDACTED],

Appellant,

from a determination by

Williamsville Suburban, LLC,

Respondent,

to discharge him from a residential
health care facility.

COPY

**DECISION
AFTER
HEARING**

Hearing before:

Kathleen Dix
Administrative Law Judge
February 8, 16, and 27, 2024
By WebEx Videoconference

Parties:

Williamsville Suburban, LLC
193 South Union Road
Williamsville, New York 14221

[REDACTED]
C/O Williamsville Suburban, LLC
193 South Union Road
Williamsville, New York 14221

JURISDICTION

By notice dated [REDACTED] 2024, Williamsville Suburban, LLC, (Facility or Respondent), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge / transfer [REDACTED] (Appellant) from care and treatment in its Facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) Section 415.3(i).

The hearing was held on February 8, 16 and 27, 2024, in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); and the New York State Administrative Procedure Act (SAPA); via Webex videoconference. (1 h. 8 m. in total.) Evidence was received and witnesses were examined. A digital recording of each day of the hearing was made.

HEARING RECORD

ALJ's Exhibits:

- I. Notice of Hearing and Notice of Discharge or Transfer
- II. Notice of Rescheduled Hearing, February 8, 2024
- III. Notice of Rescheduled Hearing, February 16, 2024

Facility's Exhibits:

1. [REDACTED] Notice of No More Medical Coverage Status (6 pages)
2. Physical Therapy Evaluation & Plan of Treatment (5 pages)
3. Not in Evidence
4. Physician's Statement of Discharge (1 page)

Appellant's Exhibit:

- A. [REDACTED] Hospital Medical Records, [REDACTED] 2021-[REDACTED] 2022
(103 Pages)

Facility's Witness:

1. Frank Guida, Administrator

Appellant's Witness:

1. [REDACTED]

ISSUES

Has the Facility established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACTS

1. Respondent, Williamsville Suburban, LLC, 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 Williamsville, New York.

2. The Appellant is a [REDACTED]-year-old male who, following a hospitalization at [REDACTED], was admitted to the Facility on [REDACTED] 2023, for wound care and rehabilitation for decreased mobility. The Appellant was seen by occupational and physical therapists. The Appellant also received pain management services at the Facility. (Exhibit 1, T. Guida.)

3. By notice dated [REDACTED], 2024, the Respondent advised the Appellant of its determination to discharge him on [REDACTED] 2024, on the grounds that his health has improved sufficiently such that he no longer needs the services provided by the Facility. The notice states that the Appellant would benefit from a lower level of care within the community, using outpatient services for wound care, physical therapy, and pain management; that the Appellant is no longer receiving occupational or physical therapy services at the Facility; and that that the Appellant completes his own wound care. (ALJ Exhibit I.)

4. The discharge notice advised the Appellant that he would be discharged to [REDACTED]. (ALJ Exhibit I.)

5. A physician's statement dated [REDACTED] 2024, states that the Appellant is fully independent and may safely be discharged back to the community, in a shelter setting, and that all his clinical needs can be met by outpatient services. (Exhibit 4.)

6. A physical therapy evaluation and plan of treatment for the period [REDACTED] 2024, through [REDACTED] 2024, notes that the Appellant is independent in bed mobility, transfers, and ambulation. (Exhibit 2.)

7. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.

8. The Appellant remains at the Facility pending the outcome of this hearing.

APPLICABLE LAW

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 PHL § 2803-z and set forth at 10 NYCRR 415.3(i) which provides, in pertinent part, that the facility shall:

(1) (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.

...

(vi) provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility, in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and provide a discharge summary pursuant to section 415.11(d) of this Title.

When alleging that a 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, the necessity of the transfer or discharge must be documented in the resident's medical record by the resident's physician. 10 NYCRR 415.3(i)(l)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(A).

The Facility has the burden of proving that the discharge is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

Grounds for Discharge

The Facility asserts that the Appellant's health has improved so that he no longer requires skilled nursing services, and that the Appellant would benefit from a lower level of care within the community. (ALJ Exhibit I.) The Appellant, a [REDACTED]-year-old man, was admitted to the Facility on [REDACTED] 2023, for wound care and rehabilitation for decreased mobility. (Exhibit 1, T. Guida.) A recent physical therapy evaluation states that the Appellant is independent in bed mobility, transfers, and ambulation. (Exhibit 2.) Review of a physician's statement dated [REDACTED] 2024, reveals that the Appellant is fully independent and may be safely discharged back to the community, and that all the Appellant's medical needs can be met by outpatient services. (Exhibit 4, T. Guida.) The Appellant is able to provide his own wound care and receives his medications without supervision. (T. Guida.)

The Appellant contends that he is not ready to leave the Facility because he has a current [REDACTED] in his [REDACTED] for which he has been receiving treatment (antibiotics) for over a month, and that the Facility's wound care doctor advised him that he needs to "go out to [REDACTED]" as [REDACTED] would be the only thing to stop the wound from getting [REDACTED]. In addition, the Appellant stated that he cannot walk [REDACTED] feet on even surfaces, that he has no ability to [REDACTED], he is unable to [REDACTED], he is unable to [REDACTED], and that he is unable to [REDACTED] or [REDACTED] or to [REDACTED] and [REDACTED]. (T. Appellant.)

The Appellant testified that being independent in a nursing home is very different than being independent anywhere else, where he has to take care of himself without help. He elaborated that at the Facility he does not need to manage household activities/responsibilities, there are no stairs, there is nothing to step into, there is a 15-foot space where grab bars are everywhere, and food is delivered to his room. The Appellant pointed out that in the Facility he has 24-hour access to nurses and all the supplies he needs so that his [REDACTED] does not continue to get [REDACTED]. (T. Appellant.)

¹ The Appellant did not specify which [REDACTED] he was referring to.

Further, the Appellant stated that he never healed from his original accident and that he needs “another [REDACTED],” which procedure includes [REDACTED] his [REDACTED] to [REDACTED], cleaning out [REDACTED] and putting in [REDACTED]. The Appellant has upcoming appointments with the [REDACTED] who are going to [REDACTED] on his [REDACTED] and he believes that it makes more sense for him to stay at the Facility until that [REDACTED] is done and he is healed. The Appellant explained that anticipating having his [REDACTED] fixed was the reason he went to long term care in the first place, that his insurance company indicated that they would continue coverage, and it is aware of his need for [REDACTED]. (T. Appellant.)

The Appellant admits that he did refuse physical therapy, but “everyone” is aware that until his [REDACTED] is fixed, it is going to continue to get worse; that a review of his medical records from [REDACTED] Hospital of treatment for his original accident will present a more complete picture of his current medical status; and that he does not think anyone will challenge his need for this [REDACTED] after reviewing his hospital records. (T. Appellant.)

Finally, the Appellant stated that he has not had “one minute of any kind of discharge planning”. (T. Appellant.)

In response, the Facility contends that the clinical necessity for the Appellant’s admission to the Facility [wound care and decreased mobility] is no longer present. The Appellant is fully independent in that regard. The Facility’s administrator stated that the goal of the Facility is for residents to return to the community or to a lower level of care and that the Appellant meets the standard for a discharge home, *i.e.*, he can walk [REDACTED] feet and can negotiate [REDACTED], which information is documented in the Facility’s records. Additionally, there are adaptive devices that the Facility can provide the Appellant for use, *e.g.*, in picking up items, and there are options in the community, such as meal on wheels, that the Appellant can use for food. In fact, the Appellant has used an “app” on his phone to order food from the community for delivery to the Facility. The Facility’s administrator testified that the Appellant’s [REDACTED] injury was not the basis for his admission but that if the Appellant does have [REDACTED] on his [REDACTED], the Facility would review a new referral for the Appellant’s care and determine if they can provide the services that the Appellant would then need. (T. Guida.)

The Appellant submitted records from his [REDACTED], 2021, to [REDACTED], 2022, stay at [REDACTED] Hospital. (Exhibit A.) These records show that the Appellant treated

for [REDACTED] and [REDACTED]. (Exhibit A, page 1 of 297.) True to the Appellant's testimony, these medical records do give an in depth look into the Appellant's medical background regarding previous treatment to the Appellant's [REDACTED]. The physician notes in these records indicate that the Appellant's [REDACTED] planning can be done on an outpatient basis.

The Appellant's [REDACTED] 2021 to [REDACTED] 2022 hospital stay was not the precipitating event to the Appellant's admission to the Facility. There is nothing in these records that mentions a [REDACTED] procedure to [REDACTED] the Appellant's [REDACTED], clean out [REDACTED] or place [REDACTED] therein as the Appellant described in his testimony. There is nothing contained in Exhibit A that compels a finding that the Appellant currently needs the services of a skilled nursing facility or that his [REDACTED] needs cannot be met on an outpatient basis.

The Respondent has established that the Appellant is no longer in need of nursing home care.

Discharge Plan

The Facility's administrator testified that the Facility had originally planned to discharge the Appellant to his home in the community which the Appellant had when he entered the Facility but that it has since learned the home is no longer available. The Facility considered discharge to a hotel but, after speaking with the Facility's business office and finding out that the Appellant's Medicaid application indicated that the Appellant had no income, it was determined that a hotel was not financially feasible for the Appellant. At that point the Facility deemed the [REDACTED] to be an appropriate discharge location.

The Appellant testified that he has been looking for a new place to live since his prior home is no longer available to him. At the February 27, 2024, hearing, the Appellant gave the address of a place he had secured in [REDACTED] to which he could be discharged. (T. Appellant.)

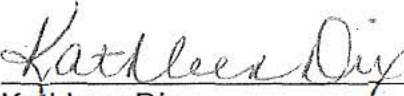
The [REDACTED] is an available and appropriate discharge location given that the Appellant independent in his ADLs and able to care for himself. However, if the Appellant has secured a home in the community that he wishes to be discharged to, the Facility may discharge the Appellant to that address in lieu of the [REDACTED]

DECISION

Williamsville Suburban, LLC has established that the discharge of the Appellant was necessary and that the discharge plan was appropriate.

1. Williamsville Suburban, LLC is authorized to discharge the Appellant pursuant to the Notice of Discharge dated [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: Menands, New York
March 11, 2024



Kathleen Dix
Administrative Law Judge

To: Williamsville Suburban, LLC
193 South Union Road
Williamsville, New York 14221

[REDACTED]
C/O Williamsville Suburban, LLC
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Williamsville, New York 14221