

cc: DOH.sm.DCAppeals@health.ny.gov by scan
SAPA File
BOA by scan



Department of Health

KATHY HOCHUL
Governor

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

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

February 20, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o The Phoenix Rehabilitation
& Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201

Tatyana Polyak, DSS
The Phoenix Rehabilitation
& Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201

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

The Phoenix Rehabilitation & Nursing Center,

Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

Hearing before:

Kathleen Dix
Administrative Law Judge
February 15, 2024
By WebEx Videoconference

Parties:

The Phoenix Rehabilitation & Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201

██████████

C/O The Phoenix Rehabilitation & Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201

JURISDICTION

By notice dated [REDACTED] 2024, The Phoenix Rehabilitation & Nursing Center, (Facility), 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 15, 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. (39 m.) Evidence was received and witnesses were examined. A digital recording of the hearing was made.

HEARING RECORD

ALJ's Exhibits:

- I. Notice of Hearing and Notice of Discharge or Transfer
- II. Rescheduling Letter

Facility's Exhibits:

1. Physician Progress notes, Admission Record, and Brief Interview for Mental Status for (13 pages)
2. Social Work Progress Notes (13 pages)
3. Social Work Progress Note [REDACTED]/2024 (1 page)

Appellant's Exhibits:

None.

Facility's Witnesses:

1. David Roll, Administrator
2. Tatyana Polyak, Director of Social Work

Appellant's Witnesses:

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, The Phoenix Rehabilitation & Nursing Center, 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 Brooklyn, New York.

2. The Appellant is a [REDACTED]-year-old female who, following a hospitalization, was admitted to the Facility on [REDACTED], 2023, for short-term rehabilitation due to difficulties in [REDACTED] secondary to [REDACTED]. The Appellant was admitted with a primary diagnosis of [REDACTED]; and additional diagnoses that included [REDACTED], difficulty in [REDACTED], [REDACTED], and [REDACTED] of the [REDACTED] with [REDACTED]. (Exhibit 1.)

3. By notice dated [REDACTED] 2023, the Respondent advised the Appellant of its determination to discharge her on [REDACTED] 2024, on the grounds that her health has improved sufficiently that she no longer needs the services provided by the facility and that she was discharged from therapy because she is able to ambulate independently. (ALJ Exhibit I.)

4. The discharge notice advised the Appellant she would be discharged to a "Women's Shelter" and listed the address as "HCFreferral@helpusa.org." (ALJ Exhibit I.)

5. A Physician's progress note dated [REDACTED] 2024, states that "Patient is medically stable at this time with no particular skilled needs. Oriented [REDACTED] and able to self administer (sic) meds Medically stable for discharge to shelter No indication for continued inpatient rehab stay". (Exhibit 1.)

6. The Appellant is independent in all her activities of daily living. (Exhibit 2.)

7. The Appellant no longer medically qualifies for inpatient skilled care and was discharged from inpatient therapy. (Exhibit 2.)

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

9. The Appellant did not appear at the hearing.

10. 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 Respondent 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).

The Notice of Hearing and the rescheduling notice was served upon the Appellant by Facility staff. (Exhibit 2.) The Appellant was reminded of the date and time of the hearing, was offered assistance in attending the virtual hearing, and was encouraged to attend the

hearing by the Facility's Director of Social Work. (Exhibits 2, 3, T. Polyak.) The Appellant did not appear at the hearing and no written request for an adjournment of the hearing was received. The hearing proceeded in the Appellant's absence. The Appellant's [REDACTED] was present for approximately half of the hearing.

Grounds for Discharge

The Facility asserts that the Appellant's health has improved so that she no longer requires skilled nursing services. (ALJ Exhibit I and Exhibit 1.) The Appellant, a [REDACTED]-year-old woman, was admitted to the Facility on [REDACTED] 2023, for short-term rehabilitation due to difficulties in [REDACTED] secondary to [REDACTED]. (Exhibit 1.)

Review of a physician progress note dated [REDACTED], 2024, reveals that the Appellant is medically stable, is oriented to [REDACTED], is able to self-administer her medications, requires no skilled care, and does not need continued inpatient rehabilitation. (Exhibit 1.) The Appellant is independent in all her activities of daily living and is able to walk [REDACTED] feet using a rollator walker, with set up. (Exhibit 2.) The Appellant is cognitively intact. (Exhibit 1.) The Appellant has completed her rehabilitation. (T. Polyak.) No contrary medical evidence was presented.

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

Discharge Plan

At time of admission to the Facility, the Appellant's discharge goal was to return to her home in the community. (Exhibits 1, 2.) The Appellant and her family were notified on [REDACTED] 2023, that the Appellant's last covered date of service by the Appellant's insurance carrier would be [REDACTED] 2023, and that the Appellant would be discharged to home on [REDACTED] 2023. (Exhibit 2.) Arrangements were made for the Appellant's family to pick her up on [REDACTED], 2023, but ultimately the Appellant refused to leave the Facility. (Exhibit 2, T. Polyak, T. Roll, T. [REDACTED].) The Facility's social worker discussed with the Appellant, her [REDACTED], and her [REDACTED] alternative discharge locations to another family member's home, and, at the request of the Appellant, made referrals to other skilled nursing and assisted living facilities. None of the canvassed facilities accepted the Appellant. (Exhibit

2, T. Polyak.) The Appellant's [REDACTED] testified that he is willing to bring the Appellant home. (T. [REDACTED].)

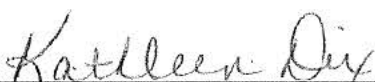
The Facility has discussed all available options regarding a discharge plan with the Appellant and her family. The Appellant has been uncooperative in the discharge process. The discharge notice advised the Appellant that she would be discharged to a women's shelter, which is an acceptable discharge location given that the Appellant is both mentally and physically capable of caring for herself.

DECISION

The Phoenix Rehabilitation & Nursing Center has established that the discharge of the Appellant was necessary and that the discharge plan was appropriate.

1. The Phoenix Rehabilitation & Nursing Center 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: Menands, New York
February 20, 2024



Kathleen Dix
Administrative Law Judge

To: The Phoenix Rehabilitation & Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201

[REDACTED]
C/O The Phoenix Rehabilitation & Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201