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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 6, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Steuben Center for Rehabilitation
7009 Rumsey Street Extension
Bath, New York 14810

Cheryll East
Steuben Center for Rehabilitation
7009 Rumsey Street Extension
Bath, New York 14810

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

[REDACTED],

Appellant,

from a determination by

Steuben Center for Rehabilitation,

Respondent,

to discharge her from a residential
health care facility.

Hearing before:

Kathleen Dix
Administrative Law Judge
March 1, 2024
By WebEx Videoconference

Parties:

Steuben Center for Rehabilitation
7009 Rumsey Street Extension
Bath, New York 14810

[REDACTED]
C/O Steuben Center for Rehabilitation
7009 Rumsey Street Extension
Bath, New York 14810

COPY

**DECISION
AFTER
HEARING**

JURISDICTION

By notice dated [REDACTED], 2024, Steuben Center for Rehabilitation, (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 March 1, 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. (44 m.) Evidence was received and witnesses were examined. A digital recording of the hearing was made.

HEARING RECORD

ALJ Exhibits:

- I. Notice of Hearing and Notice of Discharge or Transfer

Facility's Exhibits:

1. Physical Therapy Discharge Summary (3 Pages)
2. Occupational Therapy Discharge Summary (3 Pages)
3. [Not in Evidence]
4. Physician Progress Notes (6 pages)

Appellant's Exhibits:

None.

Facility's Witnesses:

1. Earnest Chigama, Social Worker
2. Cheryl East, Administrator
3. Maya Aponte, M.D.

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, Steuben Center for Rehabilitation, 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 Bath, New York.

2. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2023, as a lateral transfer from another skilled facility, with a diagnosis of [REDACTED] (Exhibit 4.) The Appellant had additional diagnoses that included [REDACTED] pain, [REDACTED], and [REDACTED] and a past medical history of [REDACTED], [REDACTED], and [REDACTED]. (Exhibits 1, 4.)

3. By notice dated [REDACTED], 2024, 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 as evidenced by the Appellant not requiring continued skilled services. (ALJ Exhibit I.)

4. The discharge notice advised the Appellant she would be discharged to an apartment in the community. (ALJ Exhibit I.)

5. A Physician's progress note dated [REDACTED] 2024, states that "[a]t this time, patient is medically cleared for discharge to the community". (Exhibit 4.)

6. The Appellant is independent in all her activities of daily living. (Exhibit 4.)

7. The Appellant is medically stable and has been discharged from physical and occupational therapies. (Exhibits 1, 2, 4.)

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

9. 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 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 is a ■-year-

old female who was admitted to the Facility on [REDACTED] 2023, as a lateral transfer from another skilled facility to be closer to her [REDACTED] (Exhibit 4, T. Appellant, Aponte.)

Review of Physician progress notes dated [REDACTED] 2024, for an examination on [REDACTED] 2024, reveals that the Appellant is medically stable, has been medically cleared for discharge to the community, is independent in all her activities of daily living, is alert, is oriented to [REDACTED], her thoughts are coherent and directed, and her speech is clear and fluent. (Exhibit 4.) The Appellant transfers with a 2-wheeled walker and can ambulate independently in her room. (Exhibit 4.) The Appellant has been discharged from both physical and occupational therapy. (Exhibits 1, 2.)

The Appellant testified that her [REDACTED] suffered a medical crisis which removed him from the home. Due to this and additional factors, including the remote nature of her home, which the Appellant described as “[REDACTED] the condition of her home, and her own limitations on caring for the home without her [REDACTED] assistance¹, the Appellant was taken to a motel to stay while her [REDACTED] was receiving medical treatment. While at the motel the Appellant [REDACTED] and was hospitalized. Following the hospitalization, the Appellant was transferred to a skilled nursing facility whereat she was being assisted in securing alternate housing. The Appellant was transferred to the current Facility to be closer to her [REDACTED] (T. Appellant.)

The Appellant further testified that she is independent in her activities of daily living, makes her own appointments, can manage her own medications, and uses a walker to ambulate, though she is afraid to use a walker without anyone behind her because of her health issues. The Appellant also testified that her [REDACTED] believes she can live independently but would need some help, and the Facility has evaluated her to see how much help she needs. The Appellant stated that she does not want to be in a nursing home and prefers to be more independent without a lot of people around. (T. Appellant.)

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

While at the current Facility, the Appellant was able to secure an apartment (Apartment #1) in a senior living establishment with the assistance of staff at the Facility². (T.

¹ The Appellant testified that her [REDACTED] did “everything” at the house.
² It is understood that this is the address as listed on the Notice of Discharge.

Appellant, Chigama.) The Appellant was initially on lists for two apartments and secured Apartment #1 sight unseen. Upon visiting Apartment #1, the Appellant felt uneasy with living there for several reasons, including its small size³, her difficulty in ambulating about the apartment with a walker or wheelchair⁴, the distance to the elevator, and the isolated feeling within the building, *i.e.*, the Appellant stated that there were not people readily around such that if she needed to urgently leave the building in the case of an emergency, or there was a problem with the elevator, there would be no one around to assist her. The Appellant testified that Apartment #1 is no longer available to her as she declined the apartment after viewing it. (T. Appellant.)

The Appellant also testified that she was on a list for a different apartment (Apartment #2) but had taken her name off the list when she secured the Apartment #1. The Appellant has since put her name back on the list for Apartment #2 and asks that she be allowed to stay at the Facility until Apartment #2 becomes available to her. (T. Appellant.) It is uncertain how long it will take for Apartment #2 to become available. (T. Appellant, Chigama.)

The Facility had previously discussed discharge plan options, such as an assisted living facility, with the Appellant, but the Appellant did not want to go to an assisted living facility. (T. Chigama.) The Appellant testified that she did not fully understand how assisted living facilities work. (T. Appellant.) At the hearing, a discussion was had on the record and the Facility explained the various options that assisted living affords residents, *vis a vis*, the independence of the resident. (T. Chigama, Aponte.) While an assisted living facility may not be in the geographic location that the Appellant prefers, it is a discharge location that may be more readily available than Apartment #2. (T. Chigama.) At the hearing, the Facility agreed to explore a discharge to an assisted living facility and the Appellant was directed to cooperate with the Facility with the same, even if an assisted living facility was used only on a temporary basis until a suitable apartment was available to her.

The discharge notice advised the Appellant that she would be discharged to an apartment in the community that is apparently no longer available to her. A medical note dated [REDACTED], 2024, the date that the Appellant was issued the Discharge Notice, indicates that the Appellant had previously signed a lease for Apartment #1 and had also

³ The Appellant stated that it was [REDACTED]

⁴ The Appellant stated that there would not be enough room to turn a wheelchair around in both the kitchen and bathroom.

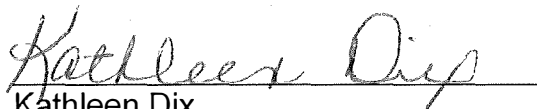
voiced her dissatisfaction with Apartment #1 as of that date. (Exhibit 4.). It is unclear whether Apartment #1 was still available on [REDACTED] 2024, thus, if the discharge location as set forth on the Notice of Discharge was no longer available on that date, it would not have then been an appropriate discharge location. Regardless, at the hearing the parties agreed that the Appellant would stay at the Facility until [REDACTED] 2024, while an alternate discharge location was explored. If the parties cannot reach an agreement for a voluntary discharge of the Appellant by [REDACTED] 2024, the Facility should serve a new Notice of Discharge upon the Appellant with an appropriate and available discharge location.

DECISION

Steuben Center for Rehabilitation has established that the discharge of the Appellant is necessary. No determination can be made whether the discharge plan was appropriate at the time the Notice was provided as it is unclear when the discharge location became unavailable. The discharge location is not appropriate as it is no longer available.

1. Steuben Center for Rehabilitation is not 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 6, 2024


Kathleen Dix
Administrative Law Judge

To: Steuben Center for Rehabilitation
7009 Rumsey Street Extension
Bath, New York 14810

[REDACTED]
C/O Steuben Center for Rehabilitation
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Bath, New York 14810