

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

March 6, 2024

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, New York 11554

Susan Welge, NHA
Rockville Skilled Nursing and Rehab Center
50 Main Avenue
Rockville Centre, New York 11570

Stacy Rizzuto, SW
Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, New York 11554



RE: In the Matter of [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

COPY

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

[REDACTED],

DECISION

Appellant,

from a determination by

ROCKVILLE SKILLED NURSING AND
REHABILITATION CENTER,

to discharge her from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Date: March 5, 2024

Parties: [REDACTED]
c/o Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, New York 11554

Rockville Skilled Nursing and Rehabilitation Center
50 Main Avenue
Rockville Centre, New York 11570

By: Susan Welge, Nursing Home Administrator

Interested Party: Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, New York 11554
By: Stacey Rizzuto, Social Worker

JURISDICTION

On [REDACTED] 2024, Rockville Skilled Nursing and Rehabilitation Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), transferred [REDACTED] (the Appellant) to Nassau University Medical Center 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: Susan Welge, NHA
Tobi Ann Campbell, DON

Facility Exhibits: 1 – Progress Note with "Transfer/Discharge Notice"
2 – PRI
3 – Admission Record
4 – BIMS
5 – [REDACTED]/24 Progress Note

Appellant Witnesses: None

Appellant Exhibits: None

Hospital Witnesses: Stacey Rizzuto, Social Worker
Chan Nyein Htet, M.D.

Hospital Exhibits: A – [REDACTED]/24 [REDACTED] Progress Note
B – [REDACTED]/24 [REDACTED] Progress Note
C – [REDACTED]/24 Medicine Progress Note

ALJ Exhibits: I – Adjudication Letter with Notice of Hearing

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female with multiple diagnoses, including [REDACTED]. (Facility Exhibit [Ex.] 3; Testimony [T.] Welge.)
2. The Appellant was admitted to the Facility on [REDACTED], 2023. (Facility Ex. 3; T. Welge.)
3. The Facility sent the Appellant to Nassau University Medical Center (Hospital) for evaluation for [REDACTED] on [REDACTED] 2024, after she [REDACTED] at the Facility. (Facility Ex. 5; T. Welge.)
4. The Facility sent the Appellant to the Hospital with a progress note printout from its electronic records containing a "Transfer/Discharge Notice". The notice states that the Appellant is being transferred/discharged because her needs cannot be met by the services available at the Facility, and stating that the Appellant requires further medical assistance/treatment. The notice identified the Hospital as the discharge location. (Facility Ex. 1; T. Welge.)
5. The Hospital [REDACTED] cleared the Appellant for return to the Facility on [REDACTED] 2024, and medically cleared the Appellant for return on [REDACTED] 2024. (Hospital Exs. A-C; T. Htet.)
6. The Facility refuses to accept the Appellant back, referencing the Appellant's [REDACTED] [REDACTED] and a notation by the Hospital of [REDACTED] (Facility Exs. 2, 5.)
7. The Appellant has remained at the Hospital during the pendency of the appeal.

ISSUES

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

APPLICABLE LAW

A residential health care facility, also referred to in the Department of Health Rules and Regulations as a nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. (PHL § 2801[2][3]; 10 NYCRR 415.2[k].)

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations. (10 NYCRR 415.3[i][1].) Excluding reasons of nonpayment and facility closure, a resident may be transferred only when:

- (1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;
- (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;
- (3) the safety of individuals in the facility is endangered; or
- (4) The health of individuals in the facility is endangered;

(10 NYCRR 415.3[i][1][i][a].)

A Facility must ensure complete documentation in the resident's clinical record when a resident is discharged. When discharge is necessary due to the endangerment of the health or safety of other individuals in the facility, documentation shall be made by a physician. (10 NYCRR 415.3[i][1][ii][b].)

Facilities are required to provide written notice of transfer or discharge that includes the following:

- (a) The reason for transfer or discharge;
- (b) The specific regulations that support, or the change in Federal or State law that requires, the action;
- (c) The effective date of transfer or discharge;
- (d) The location to which the resident will be transferred or discharged;
- (e) a statement that the resident has the right to appeal the action to the State Department of Health, which includes:

- (1) an explanation of the individual's right to request an evidentiary hearing appealing the decision;
- (2) the method by which an appeal may be obtained;
- (3) in cases of an action based on a change in law, an explanation of the circumstances under which an appeal will be granted;
- (4) an explanation that the resident may remain in the facility (except in cases of imminent danger) pending the appeal decision if the request for an appeal is made within 15 days of the date the resident received the notice of transfer/discharge;
- (5) in cases of residents discharged/transferred due to imminent danger, a statement that the resident may return to the first available bed if he or she prevails at the hearing on appeal; and
- (6) a statement that the resident may represent him or herself or use legal counsel, a relative, a friend, or other spokesman;

(f) the name, address and telephone number of the State long term care ombudsman;

(g) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act;

(h) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(10 NYCRR 415.3(i)(1)(v).)

Facilities are also required to "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."

(10 NYCRR 415.3(i)(1)(vi).)

Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii)(b), the Facility bears the burden to prove a discharge is necessary and appropriate.

DISCUSSION

The Appellant was initially admitted to the Facility on [REDACTED] 2023. The Facility sent the Appellant to the hospital for evaluation on two separate occasions in [REDACTED] 2023, once for [REDACTED] and once for [REDACTED], with no [REDACTED]. (T. Welge.) Both times the Facility accepted the Appellant back after receiving clearance from the hospital.

Susan Welge, Nursing Home Administrator, testified that the Facility transferred the Appellant to the Hospital on [REDACTED] 2024, because the Appellant [REDACTED]. The Facility sent the Appellant with a "Transfer/Discharge Notice" in which it named the Hospital as the discharge location.

The Hospital fully cleared the Appellant to return to the Facility as of [REDACTED] 2024. The Facility, however, has refused to accept the Appellant back. It adamantly maintains that it is unable to provide for the needs of the Appellant and that it cannot ensure the safety of the Appellant and other residents at the Facility, relying on the [REDACTED] incident for which she was sent to the Hospital on [REDACTED] 2024, and a notation of [REDACTED] in the Hospital's PRI. The Facility maintains that it would never accept a resident with a history of [REDACTED]. None of the documentation offered into evidence indicates any incident or history of [REDACTED] prior to [REDACTED] 2024.

If the Facility is no longer able to care for the Appellant, it must undertake to develop an appropriate discharge plan. The Facility has blatantly failed to do so by not engaging in any attempt whatsoever to locate an appropriate discharge location for the Appellant since sending her to the Hospital on [REDACTED] 2024. It is well established that discharge to a hospital, an acute care facility, is not an appropriate discharge plan, nor does it address how Appellant's medical needs will be met after discharge from the hospital as required under applicable laws and regulations. Rather than comply with governing regulations, the Facility has instead

inappropriately attempted to pawn the responsibility of care and discharge planning off onto the Hospital. The Facility, through Ms. Welge, even cross-examined Stacey Rizzuto, the Hospital Social Worker, on the steps that the Hospital has engaged in to locate a Facility for the Appellant while it has not shown that it has lifted a finger to take responsibility for or assist with such endeavor.

Ms. Rizzuto testified that she has canvassed other skilled nursing facilities within a 50-mile radius in an effort to locate an alternative discharge location for the Appellant. She has received no acceptances. Ms. Rizzuto testified that the Appellant ultimately prefers to go home but that she is unable to care for herself at home alone or with the assistance of an aide. She testified that the Appellant's [REDACTED], who did not attend the hearing, is desirous of the Appellant returning to the Facility. Ms. Rizzuto further testified that the Appellant has been under observation at the Hospital since her admission, with no reported incidents.

The Facility previously accepted the Appellant into its care and it cannot simply abandon its obligation to the Appellant by sending her to a hospital and refusing to re-admit her after she has been cleared by the hospital to return. The Facility claims that it will be unable to protect the Appellant and other residents if the Appellant returns to the Facility. However, neither Ms. Welge nor Tobi Ann Campbell, Director of Nursing, provided any compelling reason why it cannot appropriately care for the needs of Appellant now that she has been [REDACTED] and medically cleared by the Hospital. Ms. Welge and Ms. Campbell testified to the small size of the Facility – 3 units with 22 beds each – as one of the reasons that it cannot care for the Appellant. To the contrary, the small nature of the Facility likely makes for an ideal setting where the Appellant can be closely monitored and cared for until such time as discharge is necessary, or agreed upon by the parties, and the Facility develops an appropriate discharge plan.


The Appellant currently has no acute condition requiring hospital admission. She has been fully cleared for return to the Facility. The Facility has not met its burden to prove that discharge is necessary, nor has it developed an appropriate discharge plan.


DECISION

Rockville Skilled Nursing and Rehabilitation Center has not established that the Appellant's discharge was necessary and that the discharge plan was appropriate.

1. Rockville Skilled Nursing and Rehabilitation Center is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the Facility, pursuant to 10 NYCRR 415.3(i)(2)(i)(d).
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
March 6, 2024


Tina M. Champion
Administrative Law Judge

TO: 
c/o Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, New York 11554

Susan Welge, Nursing Home Administrator
Rockville Skilled Nursing and Rehabilitation Center
50 Main Avenue
Rockville Centre, New York 11570
swelge@rockvillerehab.com

Stacey Rizzuto, Social Worker
Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, New York 11554
srizzuto@numc.edu

