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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 26, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Henry J. Carter Skilled Nursing Facility
1752 Park Avenue
Manhattan, New York 11530

Anna Hock, Esq.
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300 Garden City Plaza
Suite 100
Garden City, New York 11530

David Rosado, DSW
Henry J. Carter Skilled Nursing Facility
1752 Park Avenue
Manhattan, New York 11530

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

Henry J. Carter Skilled Nursing Facility,

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

Docket #24-6311

Hearing before: Eric James Mantey
Administrative Law Judge
March 15, 2024 & March 21, 2024
By WebEx Videoconference

Parties: Henry J. Carter Skilled Nursing Facility
1752 Park Avenue
Manhattan, New York 10035

By: Anna Hock, Esq.
Barker Patterson Nichols, LLP
300 Garden City Plaza
Suite 100
Garden City, New York 11530

[REDACTED]
c/o Henry J. Carter Skilled Nursing Facility
1752 Park Avenue
Manhattan, New York 11530

By: *pro se*

JURISDICTION

By notice dated [REDACTED], 2024, Henry J. Carter Skilled Nursing Facility (the Respondent), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge [REDACTED] (the 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 15 and 21, 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. (March 15, 2024 – 0:29:51; March 21, 2024 – 03:15:52.) Evidence was received and witnesses were examined. A digital recording of the hearing was made.

HEARING RECORD

ALJ Exhibits:

- I. Notice of Hearing and Partial Discharge Notice

Respondent Exhibits:

1. Discharge Notice
2. [REDACTED], 2024, Progress Note
3. [REDACTED] 2024, Progress Note
4. [REDACTED] 2024, Rehabilitation Note/Progress Note
5. Admission Record Face Sheet

Appellant Exhibits: None

Respondent Witnesses:

1. Merary Guzman, Social Worker
2. Pappathi Anbalagan, M.D., Medical Director
3. Czesar Hernandez, Physical Therapist

Appellant Witnesses:

1. [REDACTED]

ISSUES

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

FINDINGS OF FACT

1. Respondent Henry J. Carter Skilled Nursing Facility 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 Manhattan, New York.
2. The Appellant is a [REDACTED]-year-old male who was admitted to the Respondent's facility on [REDACTED], 2023, from [REDACTED] Hospital for care and rehabilitation following [REDACTED]. His diagnoses include [REDACTED].
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 that he no longer needs the services provided by the Respondent. (Respondent Exhibit 1.)
4. The discharge notice advised the Appellant he would be discharged to his residence, [REDACTED] located in [REDACTED] (ALJ Exhibit I. and Respondent Exhibit 1.)
5. The Appellant timely appealed the Respondent's discharge determination.
6. The Appellant remains at the Respondent's facility pending the outcome of this hearing.

APPLICABLE LAW

A residential health care facility, or nursing home, is a 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 discharge is appropriate because a resident's health has improved sufficiently so the resident no longer needs the services provided by the facility, the necessity of the discharge must be documented in the resident's medical record by the resident's physician. 10 NYCRR 415.3(i)(1)(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 or transfer is necessary and that the discharge plan is appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

The Appellant was admitted to the facility for care and rehabilitation after the [REDACTED]

[REDACTED] of his [REDACTED] for which he now has a [REDACTED] (Testimony [T.] March 21,

2024; 0:07:28 – 0:11:27.) The Respondent determined to discharge the Appellant on the grounds that he is no longer in need of nursing home care. In support of this determination, the Respondent produced Dr. Pappathi Anbalagan, Medical Director to testify about that determination.

Dr. Anbalagan testified she directs patient care, works directly with patients, reviews patient records, and consults with staff teams at the Respondent's facility. (T. March 21, 2024; 0:04:14.) Dr. Anbalagan testified that the Appellant is planned for discharge to the community (his apartment) having been medically cleared for discharge as early as [REDACTED], 2024, and she agrees with the discharge plan. (T. March 21, 2024; 0:17:27, 0:18:50, 0:19:25, 0:20:03, 0:22:55, and 0:29:52 – 0:30:17.)

In support of its determination, the Respondent produced a nurse practitioner note, a progress note from [REDACTED], a [REDACTED] consultant who has also treated the Appellant, and a progress note written by Czesar Hernandez, Physical Therapist. (Respondent Exhibits 2, 3, and 4.) Together, these notes support Dr. Anbalagan's determination that the Appellant is medically cleared for discharge with his [REDACTED] controlled by 25 milligrams of [REDACTED] daily, and that the Appellant can safely function in the community with appropriate services. The services to be implemented in the community are 30 hours of home care weekly, in-home physical therapy and occupational therapy, and visiting nurse services. Medical appointments have been scheduled, and the following medical equipment was ordered for use in the community and Appellant's home: wheelchair; shower chair; cane; rollator walker; commode; bed assist rail; and grab bars. (T. March 15, 2024; 0:16:35 – 0:19:50.)

Czesar Hernandez, the Appellant's physical therapist, testified about the Appellant's progress. (T. March 21, 2024; 01:20:29.) Mr. Hernandez testified that a resident cannot be discharged if the physical therapist believes it is not yet safe to do so. (T. March 21, 2024; 01:17:26.) Once a resident reaches their maximum potential, they may then be discharged from physical therapy at the facility, with therapy to continue, as arranged by a social worker, in a resident's discharge location (e.g. their home) after discharge. (T. March 21, 2024; 01:18:17 – 01:18:52.) The Appellant was cleared, from a physical therapy standpoint, to be discharged. (T. March 21, 2024; 01:23:16. Respondent Exhibit 4.) The Appellant can: move in bed without assistance; transfer in and out of bed without assistance; walk [REDACTED] to [REDACTED] feet at a time using a walker; walk up a minimum of [REDACTED] of stairs two times in a row without assistance from another person. (T. March 21, 2024; 01:25:23 – 01:26:25.) The Appellant also has a cane to help him navigate stairs. (T. March 21, 2024; 01:29:25.)

Social worker Merary Guzman testified she reviewed the Appellant's record and held a "discharge huddle" with the nurse, physical therapist, occupational therapist, and the Appellant on [REDACTED] 2024, to plan for the Appellant's discharge given that he reached his maximum rehabilitation potential. (T. March 15, 2024; 0:06:35 and 0:07:10.) During that meeting, the Appellant agreed to be discharged on [REDACTED] 2024. (T. March 15, 2024; 0:08:10.) Ms. Guzman briefed Dr. Anbalagan, who directed her via email on how to proceed. (T. March 15, 2024; 0:07:43.) The discharge plan included establishing home health care, occupational therapy, and physical therapy for the Appellant in his home to which he will be sent with durable medical equipment. (T. March 15, 2024; 0:08:18, 0:16:35 – 0:19:50.)

The Appellant reversed course, deciding on [REDACTED], 2024, that he no longer wanted to be discharged. The Respondent replied by issuing the discharge notice dated on the same day. (T. March 15, 2024; 0:09:45; Respondent's Exhibit 1.) [REDACTED] 2024, the original planned discharge date, has been stayed during the pendency of this hearing. (T. March 15, 2025; 0:13:50.)

The Appellant has [REDACTED] over possibly falling at home and he feels he has [REDACTED] that necessitates a longer stay at the Respondent's facility. (Respondent Exhibit 4; T. March 21, 2024; 02:37:57 – 02:39:15.) However, the Appellant does appreciate the significant improvement he has experienced since being admitted to the facility. (T. March 21, 2024; 02:56:19.) He acknowledged that he did work with Ms. Guzman to establish home health care services and he did initially agree to a [REDACTED] 2024, discharge date. (T. March 21, 2024; 02:33:40 and 02:35:26.) A home health agency even went as far as viewing the Appellant's apartment via Zoom with a friend of the Appellant so that a thorough assessment could be conducted. (T. March 21, 2024; 02:36:04.)

The Appellant testified that he utilized day passes to go see his [REDACTED], to see an [REDACTED] doctor, and to go to [REDACTED]. (T. March 21, 2024; 02:44:01, 02:45:07 – 02:45:34, and 02:46:49.) He completed physical therapy. He has a [REDACTED] and various types of medical equipment. He participated in discharge planning. Home health care is established, among other services. He should not be surprised that the Respondent is discharging him.

The Appellant took issue with receiving the discharge notice just a few days prior to the discharge date. (T. March 21, 2024; 02:49:40.) Even though he clearly took part in

discharge planning, his concern that three days' notice prior to discharge is too short of a period seems valid and reasonable. PHL 2803-z, enacted in 2021, has eliminated the 10 NYCRR 415.3(i)(1)(iv)(c) exception to the 30 days' notice requirement for the discharge grounds alleged in this case.

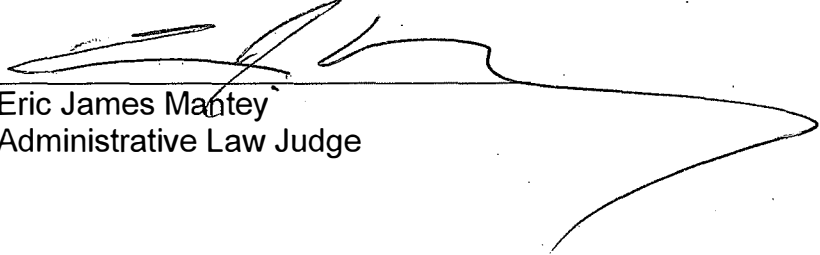
The Appellant is a recent [REDACTED], suffering from [REDACTED] and [REDACTED] who required roughly six months of therapy to become independent. Mr. Hernandez testified about [REDACTED], a condition from which the Appellant suffers and caused the Appellant to experience a fall. (T. March 21, 2024; 01:35.22 – 01:36.25.) That event did lead to fall recovery training, which Mr. Hernandez did provide to the Appellant to completion on [REDACTED] 2024. (T. March 21, 2024; 01:37:11 and Respondent Exhibit 4.) The Appellant completed more physical therapy as recently as [REDACTED] 2024, just one day prior to the second day of hearing. (T. March 21, 2024; 02:16:59.) All of this shows that the Appellant did need more time at the facility. It also indicates that the Appellant's discharge was rushed.

The Respondent has shown its determination to discharge the Appellant is correct, and the discharge plan is appropriate except for the determination to discharge the Appellant in such a short timeframe, even if the Respondent initially agreed to such a short period. The Respondent did not produce anything compelling to show anything less than 30 days' notice, as required by PHL 2803-z, was appropriate for a patient like the Appellant who has valid concerns. As such the Respondent cannot discharge the Appellant until at least [REDACTED] 2024, as long as in-home services are in place for the Appellant by that time.

ORDER

1. The Facility is authorized to discharge the Appellant in accordance with the [REDACTED] 2024, discharge notice except the discharge date shall not be until at least [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 25, 2024


Eric James Mantey
Administrative Law Judge

To: [REDACTED]
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Manhattan, New York 10035

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