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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

April 26, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Rutland Nursing Home
585 Schenectady Avenue
Brooklyn, New York 11203

Deborah Headley, DSW
Rutland Nursing Home
585 Schenectady Avenue
Brooklyn, New York 11203

Eve Koopersmith, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, New York 11021

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
RUTLAND NURSING HOME

Respondent,

to discharge him from a residential health care facility

COPY

DECISION

Hearing Before: Jean T. Carney
Administrative Law Judge (ALJ)

Held via: Cisco WebEx videoconference

Hearing Date: April 23, 2024

Parties: Rutland Nursing Home, Respondent
By: Eve Koopersmith, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road
Great Neck, NY 11021
ekoopersmith@garfunkelwild.com

[REDACTED], Appellant, *Pro se*

JURISDICTION

By notice dated [REDACTED] 2024, Rutland Nursing Home (Citadel or Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant) from the Facility on the grounds that the Appellant's condition had sufficiently improved so that he no longer needed the services provided by the Facility. The proposed discharge location is to the Department of Homeless Services, [REDACTED]. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i).

HEARING RECORD

In support of its determination, the Facility presented documents (Exhibits 1-10) and the testimony of Deborah Headley, Director of Social Services. The Appellant testified in his own behalf. ALJ Exhibit I was also admitted; and the hearing was digitally recorded.

ISSUE

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

FINDINGS OF FACT

Citations in parentheses refer to the testimony of the witness ("T") at the hearing and exhibits ("Exh") found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejected in favor of the cited evidence. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2022 from [REDACTED] for short term rehabilitation, with relevant diagnoses of [REDACTED]. (Exh 2; T Appellant and Ms. Headley).

2. The Appellant primarily uses a wheelchair; but he can ambulate for short distances on flat surfaces with staff assistance, using his [REDACTED] and a rolling walker. He cannot climb or descend stairs. (T Ms. Headley and Appellant).

3. The Appellant can communicate his needs, makes appropriate decisions, is oriented to time and place, and has been trained on proper administration of his medications. (Exhs 3 and 10; T Ms. Headley).

4. The Appellant was evaluated for physical and occupational therapy on [REDACTED] 2024, neither therapies were recommended. (Exhs 5 and 6).

5. The Facility referred the Appellant to [REDACTED]; but learned that funding for the program is on hold indefinitely. The Facility also reached out to [REDACTED]; but that organization only has availability for females at this time. The Facility also submitted applications on the Appellant's behalf to several adult care centers. Those applications are being re-considered based on recent changes in regulations disallowing those facilities to reject an applicant solely based on their wheelchair use. (Exh 9; T Headley).

6. The Facility will provide the Appellant with a 30 day supply of all medications; follow up appointments with medical providers; and adaptive equipment, including a rolling walker and wheelchair upon his discharge. (T Headley).

APPLICABLE LAW

A residential health care facility, also referred to as a nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to

residents who do not require hospitalization. (Public Health Law §§ 2801[2] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(1)(i)(a), a resident may only be discharged when the interdisciplinary care team determines that:

- (1) the transfer of 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.

Additionally, 10 NYCRR § 415(i)(1)(ii) requires that the facility ensures complete documentation in the resident's clinical record when transferring or discharging a resident under the above circumstances. The documentation shall be made by:

- (a) the resident's physician and, as appropriate, interdisciplinary care team, when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; and
- (b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph.

Before it transfers or discharges a resident, the facility must notify the resident of the transfer or discharge, and record the reasons in the clinical record. (10 NYCRR § 415.3[i][1][iii]). The written notice must include the reason for the transfer or discharge, the specific regulations that support the action, the effective date of the transfer and the location to which the resident will be discharged. (10 NYCRR § 415.3[i][1][v]).

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision. (*Stoker v. Tarantino*, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3rd Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

DISCUSSION

The Facility failed to meet its burden of showing that the discharge is necessary, and the plan is appropriate. The Facility alleges that the Appellant no longer needs the services of the Facility. In order to meet the regulatory requirements for discharging a resident on the grounds that their condition has improved such that they no longer need the services of the facility, the resident's physician "must document information about the basis for transfer or discharge." (DAL-NH 19-07). The Facility's only evidence from the Appellant's physician was a brief letter containing conclusory statements in support of the discharge plan that Ms. Headley testified was written in response to the Appellant requesting a hearing. (Exh 4; T Ms. Headley). Due to the Facility's failure to provide complete documentation by a physician in the Appellant's clinical record, the grounds for discharge must be denied.

In light of the foregoing, there is no need to address whether the discharge plan is appropriate. However, it is noted that the report submitted from physical therapy indicates that while the Appellant is independent in some areas, he requires close supervision when ambulating. (Exh 5). A discharge plan must "[address] the medical needs of the resident and how these will be met after discharge." (10 NYCRR § 415.3[i][1][vi]). While the testimony addressed some aspects of how the Appellant's medical needs would be met upon his discharge, there was no evidence regarding how


the Appellant would be able to navigate the shelter system when he cannot ambulate without close supervision. Additionally, the Facility failed to address the Appellant's concerns regarding his inability to walk properly or navigate stairs. Finally, the evidence reflects that an application was not made to the shelter, so there is no indication that an appropriate bed is available for the Appellant, given his mobility limitations.

ORDER

Rutland Nursing Home has failed to establish that the Appellant's discharge is necessary, and its discharge plan is appropriate.


1. The Appellant may not be discharged pursuant to the notice 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: Albany, New York
April 26, 2024**


JEAN T. CARNEY
Administrative Law Judge

TO: Eve Koopersmith, Esq.
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