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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 22, 2024

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Beth Abraham Center
for Rehabilitation
612 Allerton Avenue
Bronx, New York 10467

Meir Block, Assistant NHA
Beth Abraham Center
for Rehabilitation
612 Allerton Avenue
Bronx, New York 10467

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

BETH ABRAHAM CENTER,

Respondent,

to discharge her from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Date: March 20, 2024

Parties: [REDACTED]
c/o Beth Abraham Center
612 Allerton Avenue
Bronx, New York 10467
By: Pro Se

Beth Abraham Center
612 Allerton Avenue
Bronx, New York 10467
By: Meir Block, Assistant Nursing Home Administrator

JURISDICTION

By notice dated [REDACTED] 2024, Beth Abraham Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination 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 digital recording was made of the proceeding.

HEARING RECORD

ALJ Exhibits: 1 – Letter with Notice of Hearing and Transfer/Discharge Notice [REDACTED] /24)

Facility Exhibits: 1 – Progress Notes
2 – Progress Notes

Appellant Exhibits: None

Facility Witnesses: Erica Schwartz, Director of Social Services
Arash Arvin, M.D.
Saul Silbermintz, Nursing Home Administrator
Evan Stein, Assistant Director of Rehabilitation

Appellant Witnesses: None

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED], 2017, for rehabilitation. (Exhibit [Ex.] 1; Testimony [T.] Schwartz.)
2. The Appellant has been independent in all her activities of daily living since at least [REDACTED] 2023. (T. Stein.)
3. The Appellant has a [REDACTED] that can be managed in the community by a private-care physician. She is medically stable. (Ex. 1; T. Arvin.)
4. The Appellant has no skilled nursing needs and manages all of her own care and activities of daily living. (Exs. 1-2; T. Schwartz, Arvin, Silbermintz, Stein.)
5. The Appellant has violated the Facility's policy prohibiting [REDACTED] on more than one occasion by consuming [REDACTED] and by dispensing [REDACTED] to other residents at the Facility. (Ex. 2; T. Schwartz.)
6. On [REDACTED] 2024, the Facility issued a Transfer/Discharge Notice to the Appellant which proposed discharge to [REDACTED]. (ALJ Ex. I.)
7. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant's health has improved sufficiently such that the Appellant no longer requires the services of the Facility, and because the safety of individuals in the Facility would be endangered by the Appellant's [REDACTED]. (ALJ Ex. I.)
8. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.
9. The Appellant has remained at the Facility 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].)

The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2), which states:

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.

The Facility also alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(3), on the grounds that the safety of individuals in the facility is endangered.

A Facility must ensure complete documentation in the resident's clinical record when a resident is discharged. (10 NYCRR 415.3[i][1][ii].)

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), the Facility bears the burden to prove a discharge is necessary and appropriate.

DISCUSSION

The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED], 2017. Erica Schwartz, Director of Social Services, testified that the Appellant has no skilled nursing needs and can fully care for herself in the community. Evan Stein, Assistant Director of Rehabilitation, testified that the Appellant is at an independent level of care and has been since at least [REDACTED] 2023, when he began working at the Facility. Arash Arvin, M.D., testified that the Appellant is medically stable for discharge and that her needs can safely be met within the community.

The Appellant presumably, by initiating this appeal, disputes that discharge is appropriate. However, after voicing complaints about administration at the Facility, and after being instructed by the Administrative Law Judge to remain silent while the first witness testified, the Appellant abruptly left the hearing. She did not return. The testimony of the Facility's witnesses and its documentary evidence is uncontradicted.

The Facility has met its burden to show that the Appellant's health has improved sufficiently such that she no longer needs the services provided by the Facility, necessitating discharge in accordance with 10 NYCRR 415.3(i)(1)(i)(a)(2). It is not necessary to reach the issue of whether the safety of individuals in the Facility would be endangered by the Appellant's [REDACTED]

Ms. Schwartz testified that the Appellant has expressed that she does not want to go to another skilled nursing facility. Ms. Schwartz testified that there is no assisted living facility that will accept the Appellant because she does not have social security income and because of the

Appellant's history of [REDACTED]. Ms. Schwartz also testified that the Appellant has submitted a housing application with the [REDACTED] program but that no housing is currently available.

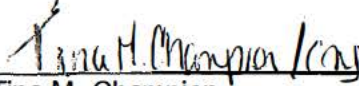
The Facility has shown that discharge is necessary. It has also shown that the proposed discharge location, a women's shelter, is available and that the Appellant's needs can safely be met in the community.

DECISION

Beth Abraham Center has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Beth Abraham Center is authorized to discharge the Appellant in accordance with its [REDACTED] 2024, Transfer/Discharge Notice.
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 21, 2024


Tina M. Champion
Administrative Law Judge

TO: [REDACTED]
c/o Beth Abraham Center
612 Allerton Avenue
Bronx, New York 10467

Meir Block, Assistant Nursing Home Administrator
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612 Allerton Avenue
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