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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

██████████
c/o Mayfair Care Center
100 Baldwin Road
Hempstead, New York 11550

Richard Sherman, NHA
Mayfair Care Center
100 Baldwin Road
Hempstead, New York 11550

Barbara Phair, Esq.
Abrams Fensterman, LLP
3 Dakota Drive, Suite 300
Lake Success, New York 11042

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

Mayfair Care Center,

Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

Hearing before: Kathleen Dix
Administrative Law Judge
March 20, 2024
By WebEx Videoconference

Parties: Mayfair Care Center
100 Baldwin Road
Hempstead, New York 11550
By: Barbara Stegun Phair, Esq.

[REDACTED]
c/o Mayfair Care Center
100 Baldwin Road
Hempstead, New York 11550

JURISDICTION

By notice dated [REDACTED] 2024, Mayfair Care Center, (Facility or Respondent), 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 20, 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. (47:32 m.) Evidence was received and witnesses were examined. A digital recording of the hearing was made.

HEARING RECORD

ALJ's Exhibits:

1. Notice of Hearing and Notice of Discharge or Transfer

Facility's Exhibits:

1. Physician Progress Note, [REDACTED]/24 (1 page)
2. Nursing Discharge summary / plan (7 pages)
3. PT & OT Discharge summary (11 pages)
4. Functional Abilities and Goals (section GG of the MDS – 3 pages)

Appellant's Exhibits:

None

Facility's Witnesses:

1. Herman Tong, Physician's Assistant
2. Eliian Ramezani, Physical Therapy Director and Occupational Therapy Supervisor
3. Dina Day, Nursing Supervisor
4. Mikki Singh, Director of Social Work

Appellant's Witnesses:

1. [REDACTED] Appellant

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, Mayfair Care Center, 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 Hempstead, New York.
2. The Appellant is a [REDACTED]-year-old female who, following a hospitalization, was admitted to the Facility on [REDACTED] 2023, for sub-acute rehabilitation. The Appellant has received occupational and physical therapy while at the Facility. (Exhibit 1, T. Tong.)
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 such that she no longer needs the services provided by the Facility. (ALJ Exhibit I.)
4. The discharge notice advised the Appellant that she would be discharged to [REDACTED]
[REDACTED]
[REDACTED]. (ALJ Exhibit I.)
5. A physician's statement dated [REDACTED] 2024, states that the Appellant is doing well with no signs of distress or pain, is totally self-sufficient with activities of daily living (ADL), requires no assistance or assistive devices, has no difficulty with socialization with other residents, is not reliant on any services from the facility, is not dependent on any level of care, and is stable to be discharged back to the community. (Exhibit 1.)
6. A physical therapy discharge summary and an occupational therapy discharge summary both indicate that the Appellant's discharge reason is that she has achieved "the highest practical level" of therapy. (Exhibit 3.)
7. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.

8. The Appellant remains at the Facility pending the outcome of the 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 Facility 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).

DISCUSSION

The Facility asserts that the Appellant's health has improved such that she no longer needs the services provided by the Facility. (ALJ Exhibit I.) The Appellant, a [REDACTED]-year-old woman, was admitted to the Facility on [REDACTED] 2023 for sub-acute rehabilitation following a hospital stay. (Exhibit 1; T. Tong.) The Appellant is independent in all ADLs and strong enough to be discharged to the community. (Exhibits 1, 2; T. Ramezani, Day.) The Appellant uses [REDACTED] for her [REDACTED], is fully functional using the [REDACTED] and has no difficulty [REDACTED] the Appellant is not on [REDACTED] nor receiving [REDACTED] treatments at this time. (T. Tong, Day.) The Appellant is able to go out on day passes and rides the bus independently. (T. Day, Singh.) The Appellant requires no skilled nursing services at this time. (T. Tong, Ramezani, Day, Singh.)

Review of a physician's statement dated [REDACTED] 2024, and the testimony at hearing, reveals that the Appellant is fully independent and may be safely discharged back to the community. (Exhibit 1; T. Ramezani, Day, Singh.)

The Appellant contends that she is not ready to leave the Facility because she needs [REDACTED] and uses a [REDACTED] and will need special arrangements or a special facility to go to for these. She maintains that she cannot return to her prior residence. The Appellant stated that she has recently fallen, resulting in a [REDACTED] and [REDACTED], and a [REDACTED], and that as a result she is in pain and has difficulty moving around. She stated that she is waiting for this injury to be addressed. The Appellant also stated that while she does go out on passes, she cannot do everything she used to do and has not been able to look for a place to live. The Appellant testified that she needs an eye examination, new eyeglasses, and dental and [REDACTED] appointments, and that she would like to have these taken care of before she leaves the Facility. The Appellant also testified that she is unable to work and needs assistance with applying for social security or disability and she believed the Facility would help her with that. (T. Appellant.)

The Appellant advised the Facility of her recent fall. The Appellant was examined for injuries, was given pain medication (Tylenol) and continues to be stable. There has been no change in the Appellant's plan of care since the fall. (T. Day.)

Mikki Singh, the Facility's director of social work, testified that the Facility had several discussions with the Appellant regarding discharge planning and that the Appellant told her that she could not return to her previous residence because she was on [REDACTED]. Once the Appellant was no longer on [REDACTED], she advised Ms. Singh that she still could not return to her prior residence. Ms. Singh reached out to other facilities, including [REDACTED], a representative of which came to the Facility and met with the Appellant, but the Appellant was not accepted into these other facilities because she has no income. The Appellant did go out on pass stating she was going to look for a place to live but has not advised the Facility that she has found a place to live. (T. Singh.) The Appellant's care team at the Facility deemed the [REDACTED] to be an appropriate discharge location. (T. Tong, Ramezani, Day, Singh.) The Appellant will be discharged with necessary prescriptions, can seek further treatment in the community on an outpatient basis, and the [REDACTED] can assist the Appellant with obtaining governmental assistance or benefits that she is entitled to receive. (T. Tong, Day, Singh.)

The Appellant testified that she has been looking for a new place to live since her prior home is no longer available to her. The Appellant does not want to go into a shelter system and does not believe that [REDACTED] would be a good fit for her given her age. The Appellant would like to go to a place where she would be assisted with everyday tasks and meals. (T. Appellant.)

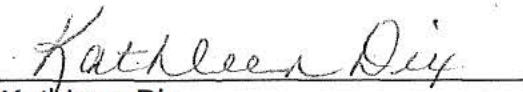
The Appellant is no longer receiving any skilled services or therapies at the Facility. The Appellant is independent in her ADLs and able to care for herself. The Appellant is able to go out into the community and use a bus for transportation. The Respondent has established that the Appellant is no longer in need of nursing home care. Given that the Appellant is independent in her ADLs and able to care for herself, the [REDACTED] is an available and appropriate discharge location.

DECISION

Mayfair Care Center has established that the determination to discharge of the Appellant was necessary and that the discharge plan is appropriate.

1. Mayfair Care Center is authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED] 2024.
2. The 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 22, 2024


Kathleen Dix
Administrative Law Judge

To: Richard Sherman, Administrator
Mayfair Care Center
100 Baldwin Road
Hempstead, New York 11550

[REDACTED]
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