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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 3, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o The Grand at Barnwell
3230 Church Street
Valatie, New York 12184

Jaimee Hawk, DSW
The Grand at Barnwell
3230 Church Street
Valatie, New York 12184

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

**The Grand Rehabilitation and
Nursing at Barnwell,**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

#DA24-6326

Hearing before: Eric James Mantey
Administrative Law Judge
March 27, 2024
By WebEx Videoconference

Parties: The Grand Rehabilitation and Nursing at Barnwell
3230 Church Street
Valatie, New York 12184

By: Jaimee Hawk, Director of Social Work
Beth Doty, Assistant Administrator

[REDACTED]
c/o The Grand Rehabilitation and Nursing at Barnwell
3230 Church Street
Valatie, New York 12184

By: *pro se*

JURISDICTION

By notice dated [REDACTED] 2024, The Grand Rehabilitation and Nursing at Barnwell (Respondent), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge [REDACTED] (Appellant) from care and treatment at its nursing home. The Appellant appealed the determination to the New York State Department of Health pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) Section 415.3(i).

The hearing was held on March 27, 2024, in accordance with 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). Evidence was received and witnesses were examined. A digital recording of the hearing was made. (01:35:12.)

HEARING RECORD

ALJ Exhibits:

- I. Notice of Hearing and Notice of Discharge/Transfer.

Respondent Exhibits:

1. Admission Record

Appellant Exhibits: None

Respondent Witnesses:

1. Jaimee Hawk, Director of Social Work
2. Beth Doty, Assistant Administrator

Appellant Witnesses:

1. [REDACTED]
2. [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. The Respondent is a residential health care facility, or nursing home, within the meaning of PHL § 2801.2 and 10 NYCRR 415.2(k), located in Valatie, New York.

2. The Appellant is a [REDACTED]-year-old male who was initially admitted to the Respondent's facility on [REDACTED] 2023, for rehabilitation after sustaining a [REDACTED]. (Respondent Exhibit 1; Testimony [T.] Appellant; 01:11:09.)

3. The Appellant lived with his [REDACTED] prior to admission to the facility, but his [REDACTED] informed the facility that he will not be able to live with her after discharge. (T. Hawk; 00:02:54 – 00:02:58.)

4. The Appellant favors discharge to some form of assisted living residence and he was offered a bed at the [REDACTED]. (T. Hawk; 00:03:31 – 00:03:35.)

5. By notice dated [REDACTED] 2024, the Respondent issued a discharge notice advising the Appellant of its determination to discharge him on the grounds that his health has improved sufficiently so he no longer needs the services provided by the Respondent's facility. [REDACTED] was listed as the discharge destination. [REDACTED], 2024, was the planned discharge date. [REDACTED] subsequently rescinded its offer. (T. Hawk; 00:05:03 – 00:05:18; 00:06:01.)

6. On [REDACTED], 2024, the Respondent issued a second discharge notice, updating the discharge location but maintaining the original discharge date and again

advising the Appellant of its determination to discharge him on the grounds that his health has improved sufficiently so he no longer needs the services provided by the Respondent's facility. (ALJ Exhibit I.)

7. The [REDACTED], 2024, discharge notice advised the Appellant he would be discharged to [REDACTED] DSS, [REDACTED].

(ALJ Exhibit I.)

8. 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 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; or
- (3) the safety of individuals in the facility is endangered; or
- (4) the health of individuals in the facility is endangered.

...

(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. . .

The facility shall ensure complete documentation in the resident's clinical record by the resident's physician when discharge is on grounds that the resident no longer needs nursing home care. When alleging that a transfer or discharge is appropriate because the safety or health of individuals in the facility is endangered, the necessity of the discharge must be documented in the resident's clinical record by a physician. 10 NYCRR 415.3(i)(1)(ii)(a)&(b); 42 C.F.R. § 483.15(c)(2)(ii)(A).

The Respondent has the burden of proving that the discharge is necessary and that the discharge plan is appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

Both parties addressed the Appellant's alleged alcoholism and alleged use of [REDACTED] at the facility, which the Appellant vehemently denies. This issue is disregarded and deemed irrelevant to this proceeding. A facility is required to state its grounds for discharge in the discharge notice. 10 NYCRR 415.3i(1)(v)(a)&(b). The discharge notice is clear; the only discharge reason stated in it is that he is no longer in need of nursing home care. (ALJ Ex. I; T. Hawk; 00:07:10.) The remainder of this discussion will focus solely on that.

Ms. Hawk, the Respondent's Director of Social Work, testified about discharge planning, refreshing her recollection by reading notes in the patient record that the Appellant could see contemporaneously. She recalled a Care Conference on [REDACTED] 2024, during which she and other staff discussed the Appellant's care; the Appellant

did not attend because he did not want to leave his room. (T. Hawk; 00:28:29 – 00:28:40.) That conference happened at a time when the Appellant had agreed to go to assisted living, housing referrals were pending, and physical therapy and occupational therapy continued. (T. Hawk; 00:30:42 – 00:30:55.)

Ms. Hawk further testified that she works on discharge planning when the therapy department tells her a resident is independent. (T. Hawk; 00:33:23.) The Appellant is independent and ready to reenter the community. (T. Hawk; 00:33:43.) Physical therapy and occupational therapy with the Appellant has concluded. (T. Hawk; 00:34:27.) The Appellant does not receive services other than food, a bed to sleep in, and medication management since physical therapy and occupational therapy have concluded. (T. Hawk; 00:40:07 – 00:40:41.)

Informed by the therapy department that the Appellant was completely independent, Ms. Hawk carried out discharge planning with him by discussing several options, including: assisted living, although he does not need that type of care, he wants it; living with family, but he does not want to live with his [REDACTED] he cannot live with his [REDACTED] and he does not want to leave New York to live with other family. (T. Hawk; 00:34:50. – 00:36:22.) Ms. Hawk referred the Appellant to four or five assisted living facilities which immediately denied him due to his age; he is only [REDACTED] and most facilities require residents to be at least [REDACTED] years of age. (T. Hawk; 00:36:12.) The [REDACTED] did accept the Appellant but then later rescinded his admission offer. (T. Hawk; 0036:33 – 00:36:50.)

The Appellant stated he participated in planning for a transition to assisted living. (T. Appellant; 01:21:06 – 01:21:25.) Unfortunately, the [REDACTED] rescinded its offer due to

the Appellant's suspected [REDACTED] use within the Respondent's facility. (T. Hawk; 00:37:02 and 00:37:53.) There are no other residential options left to consider, so the Respondent plans to discharge the Appellant to the [REDACTED] Department of Social Services ([REDACTED] for shelter placement. (T. Hawk; 00:38:51.; ALJ Ex. I.) The Respondent will transport him to [REDACTED] (T. Hawk; 00:33:45.)

Beth Doty, the Respondent's Assistant Administrator, confirmed that the Appellant was issued a 30-day discharge notice because he does not need nursing home care. (T. Doty; 00:50:28.) The facility holds weekly utilization review meetings during which Ms. Doty, social workers, therapists, admissions staff, and physicians' assistants review patient records. During several of those meetings the Appellant was deemed independent and able to transition back into the community. (T. Doty; 00:50:39 – 00:51:56.)

The Appellant's ability to safely function in the community is evidenced by his leaves of absence from the facility. (T. Doty; 00:52:04.) Doctors' orders allow the Appellant to go out on leaves of absence because it is appropriate for him to leave the building. (T. Doty; 00:53:00.) The Appellant's leaves of absence can last for days. (T. Doty; 00:53:23.) He was out, overnight, on the following days: [REDACTED], 2024, [REDACTED] through [REDACTED], 2024, [REDACTED] through [REDACTED] 2023, and [REDACTED] through [REDACTED] 2024. (T. Doty; 01:00:15 – 01:00:31.) He has exhausted the number of leave of absence days allowed by Medicaid. (T. Doty; 00:53:36; 01:00:32.) He can continue to leave the facility for medical appointments. (T. Doty; 00:54:03.) The Appellant should be able to physically manage this since he ambulates throughout the

facility independently without the use of medical equipment such as walkers or wheelchairs. (T. Doty; 00:54:33.)

The Appellant testified about his physical injuries: he hurt his [REDACTED] and he is now [REDACTED]; he had a [REDACTED] injury from which he had to re-learn how to [REDACTED] (T. Appellant; 01:10:50 – 01:11:16.) He used a walker when he first entered the facility. (T. Appellant; 01:11:17.) The Appellant explained he received physical and occupational therapy that addressed both ailments. (T. Appellant; 01:11:47 – 01:12:00, 01:13:03 – 01:13:23.) But he has been scared and uncertain about his physical abilities when out in the community, such as when he went to the “[REDACTED]” for an event. (T. Appellant; 01:14:14 – 01:14:34.) This outing made him feel more therapy is needed and he indeed resumed therapy. (T. Appellant; 01:16:16.) He feels neither independent nor physically stable, and he cited to a time he suffered an unwitnessed/unrecorded fall. (T. Appellant; 01:17:54 – 01:18:00.) The medical professionals that surround him, in their professional opinions, have more confidence in his abilities.

It seems that the Appellant is more concerned about his discharge location as opposed to his ability to safely exist outside a nursing home. He believes discharge to a social services department instead of a residential setting could lead to a gap in the receipt of physical therapy; it would not be a smooth transition. (T. Appellant; 01:26:00 – 01:26:41, 01:27:25.) However, the Respondent has been clear, services will be in place prior to the Appellant’s discharge.

The Appellant has lived at the Respondent’s facility for over six months. He received therapy there and at [REDACTED] prior to that. It is understandable

that he is nervous about re-entering the community after such a long absence. Facility professionals assert he no longer needs skilled nursing services and he can safely live outside of a nursing home. His overnight trips outside of the facility confirm his health has improved sufficiently so that he can safely live in the community. He also safely traveled to, attended, and returned to the facility from an event at a local arena. It might be appropriate to discharge the Appellant to the discharge location listed in the Discharge Notice – [REDACTED] Department of Social Services, [REDACTED] [REDACTED]. However, this discharge cannot be granted.

10 NYCRR 415.3(i)(1)(ii)(a) requires nursing homes to ensure complete documentation in the resident's clinical record by the resident's physician when discharge is on grounds that the resident no longer needs nursing home care. The Respondent has not met its burden of proof because it has not presented the requisite documentation from the Appellant's treating physician that the discharge is appropriate.

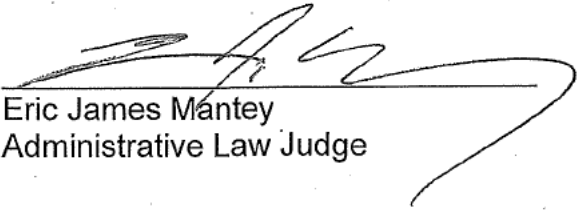
DECISION

The Respondent failed to establish that its determination to discharge the Appellant on grounds he is no longer in need of nursing home care is correct.


1. The Grand Rehabilitation and Nursing at Barnwell is not authorized to discharge the Appellant pursuant to the Notices of Discharge dated [REDACTED] [REDACTED] 2024, and [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

April 3, 2024


Eric James Mantey
Administrative Law Judge

To: The Grand Rehabilitation and Nursing at Barnwell
3230 Church Street
Valatie, New York 12184
Attn: Jaimee Hawk, DSW


c/o The Grand Rehabilitation and Nursing at Barnwell
3230 Church Street
Valatie, New York 12184