



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Executive Deputy Commissioner

March 29, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
born Fox Memorial Hospital
1 Norton Avenue
Oneonta, New York 13820

Tracey Graney, Case Management
Aurelia Osborn Fox Memorial Hospital
1 Norton Avenue
Oneonta, New York 13820

Yakov Appelbaum, NHA
Delhi Rehabilitation & Nursing Center
41861 State Route 10
Delhi, New York 13753

Roger A. Bearden, Esq.
Bond, Schoeneck & King
22 Corporate Woods Boulevard
Suite 501
Albany, New York 12211

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: nm
Enclosure

cc: DOH.sm.DCAppeals@health.ny.gov by scan
SAPA File
BOA by scan

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

In the Matter of an Appeal, pursuant to
10 NYCRR 415.3, by

[REDACTED]

Appellant,

from a determination by

**Delhi Rehabilitation & Nursing
Center,**

Respondent,

to discharge him from a residential
health care facility.

**DECISION
AFTER
HEARING**

Docket # 24-6327

Hearing before: Eric James Mantey
Administrative Law Judge
March 26, 2024
By WebEx Videoconference

Parties: Delhi Rehabilitation & Nursing Center
41861 State Route 10
Delhi, New York 13753

By: Roger A. Bearden, Esq.
Bond, Schoeneck & King
22 Corporate Woods Boulevard
Suite 501
Albany, New York 12211

[REDACTED]
c/o Aurelia Osborn Fox Memorial Hospital
1 Norton Avenue
Oneonta, New York 13820

By: *Pro Se*, with assistance from Ombudsmen Patrick Binko
and Danielle LaBare

Interested Party: Aurelia Osborn Fox Memorial Hospital

1 Norton Avenue
Oneonta, New York 13820

By: Joan MacDonald, Chief Nurse Officer, Vice President, R.N.

JURISDICTION

On [REDACTED] 2024, Delhi Rehabilitation and Nursing Center (Respondent), a residential health care facility subject to Article 28 of the Public Health Law (PHL), transferred [REDACTED] (Appellant) from care and treatment in its facility to [REDACTED] Hospital [REDACTED] [REDACTED] and would not allow him to return. On [REDACTED] [REDACTED] 2024, the Respondent made a final determination to not allow the Appellant's return to the facility. 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 [REDACTED] 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. (02:06:55.) Evidence was received and witnesses were examined. A digital recording of the hearing was made.

HEARING RECORD

ALJ Exhibits:

- I. Notice of Hearing

Respondent's Exhibits:

- A. Sign in Sheet
- B. Progress Note

Appellant's Exhibit: None

Respondent's Witnesses:

1. Daniel Kamara, N.P.
2. Felix Oduwa, M.D., Medical Director

3. Breanna Colella, Admissions Director for Personal Healthcare

Appellant's Witnesses:

1. [REDACTED]

Other Witnesses:

1. Joan MacDonald, Chief Nurse Officer, Vice President of Operations, R.N.
2. Kaitlin Wakeman, Case Manager

ISSUES

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

FINDINGS OF FACT

1. Respondent 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 Delhi, New York.

2. The Appellant is a [REDACTED]-year-old male who was admitted to the facility on

[REDACTED] 2024, with a history of [REDACTED]
[REDACTED]
[REDACTED] (Respondent Exhibit [Ex.] B.)

3. On [REDACTED] 2024, the Appellant was sent to [REDACTED] because he needed a higher level of care. (Respondent Ex. B.)

4. On [REDACTED] 2024, [REDACTED] sent the Appellant to Aurelia Osborn Fox Memorial Hospital (A.O. Fox). (Testimony [T.] MacDonald; 02:02:31; 02:04:53.)

5. [REDACTED] and A.O. Fox are both part of the Bassett Healthcare network. (T. MacDonald; 02:04:14.)

6. The Respondent did not give written notice of discharge or transfer to the Appellant prior to transferring him from the Respondent's facility to [REDACTED] (T. MacDonald; 01:54:47.)

7. On [REDACTED] 2024, the Respondent held a care plan meeting to determine the Appellant's readmission during which it was determined the Respondent's facility is not properly equipped to accept the Appellant back into care. (Respondent Ex.'s A and B.) The Respondent again did not give a written notice of discharge.

8. The Appellant remains at A.O. Fox pending the outcome of this hearing. (T. MacDonald; 02:05:45.)

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:

(1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in 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 it is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in 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)(1)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(B).

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

The Respondent transferred the Appellant to [REDACTED] on [REDACTED] 2024, after the Appellant was in the facility for approximately [REDACTED] days, and refused to readmit him to the facility, asserting that a transfer or discharge is necessary for the Appellant's welfare and because the Appellant's needs cannot be met after reasonable attempts at accommodation in the facility. (Respondent Ex. B.) Specifically, a special hooyer lift, a bed of adequate size, and doorways [REDACTED] to accommodate a [REDACTED] wheelchair size are claimed not to be available at the Respondent's facility. (Respondent Ex. B.) The Respondent also asserts the Appellant's refusal of treatment contributes to the inappropriateness of his stay there. (Respondent Ex. B.)

Daniel Kamara, N.P., testified he was very concerned with the Appellant's [REDACTED], [REDACTED] wounds, [REDACTED] [REDACTED], and [REDACTED] which make him a challenging patient despite his pleasant demeanor. (T. Kamara; 00:09:31 – 00:13:47.) However, N.P. Kamara was comfortable treating the Appellant because a consulting wound specialist visited the facility every week. (T. Kamara; 00:14:28.)

N.P. Kamara's comfort level dissipated three weeks prior to [REDACTED] when he learned the Appellant started to refuse care from the wound specialist. (T. Kamara; 00:14:59 – 00:15:13.) When, according to N.P. Kamara, the Appellant refused wound treatment again on [REDACTED] 2024, N.P. Kamara felt a risk of another [REDACTED] was too great and necessitated a higher level of care. (T. Kamara; 00:17:57.)

N.P. Kamara's concern about [REDACTED] appears credible. His belief that the Appellant was refusing wound care does not appear credible. N.P. Kamara testified on cross examination that he understood the Appellant simply did not want anyone to take pictures of the wounds, but he acknowledged that they were being treated by a wounds nurse who was treating the Appellant daily and wrapping the Appellant's [REDACTED] (T. Kamara; 00:22:43; 00:25:08 – 00:25:12.) This indicates the Appellant was not refusing care. The Appellant also credibly testified he did not refuse care. (T. Appellant; 01:33:36.)

Dr. Felix Oduwa, Medical Director at the Respondent's facility testified that he is familiar with the Appellant's medical condition, as it is his job to review all new patients, and he did perform a brief exam on the Appellant not long after the Appellant's admission to the facility. (00:34:05 – 00:34:44.) Dr. Oduwa did not play a

role in the discussion to send the Appellant to [REDACTED] on [REDACTED] 2024. (T. Oduwa; 00:36:42 – 00:36:54). Dr. Oduwa was, however, part of the [REDACTED] 2024, care plan meeting during which it was decided to not allow the Appellant to return to the facility. (Respondent Ex.'s A and B.) Dr. Oduwa's testimony was consistent with the opinion he expressed in his progress note (Respondent Ex. B) documenting the reasons for which the Appellant would not be re-admitted to the facility.

Breanna Colella, the Respondent's Admissions Director for Personal Healthcare, testified she, among others, determines if the facility can clinically meet the needs and safety of a prospective resident before a person is admitted. (T. Colella; 00:59:17.) Ms. Colella was not involved in the decision to initially admit the Appellant (T. Colella; 01:00:01), and nothing in the record gives a specific answer as to why the Appellant was initially admitted. However, as Ms. Colella testified, the Respondent does have a system in place to ensure the appropriateness of an admission, and the Appellant was admitted. This establishes that the admission was appropriate in the eyes of the Respondent. The [REDACTED], 2024, determination to not allow the Appellant to return is based on factors (a lack of a special hooyer lift, a bed of adequate size, and doorways [REDACTED] to accommodate a [REDACTED] wheelchair size) that would have been present upon the initial admission. This is a glaring contradiction. Furthermore, the reasons for discharge are documented in a progress note effective [REDACTED] 2024, which is close to two weeks after the Appellant was turned away from the Respondent's facility.

Ms. Colella's testimony reflects her concern that the Appellant should not have been admitted to the Respondent's facility and she did discuss that concern with her

Director of Admissions. (T. Colella; 01:01:19 – 01:01:37.) She did admit her facility is equipped to care for [REDACTED] patients, but not all [REDACTED] patients, and the Appellant falls into the category of [REDACTED] patients for whom, according to her, the facility is not equipped to provide care. (T. Colella; 01:02:12 – 01:03:59; 01:09:40 – 01:10:02.) Not in the record is any explanation why the Respondent did not commence discharge planning (e.g. finding another suitable facility for the Appellant) immediately after the Appellant's admission because, if Ms. Colella's testimony is believed, the Appellant should never have been admitted. It therefore seems reasonable that discharge planning should have commenced at that time. This concern is echoed by the Appellant, as he asserted there were problems from "day one" of his admission to the Respondent's facility. (T. Appellant; 01:25:14.)

Yet the Respondent did not start looking for a more appropriate facility until well after it sent the Appellant to the hospital and after it informed the hospital it would not take the Appellant back. (T. Colella; 01:04:15 – 01:08:44.)

Instead of looking for a more appropriate nursing home, the Respondent cast-off the Appellant at a nearby hospital and refused to take him back, at some point locking him out of the facility upon return from the hospital, which was when he was first told the Respondent would not take him back. (T. Appellant; 01:26:42 – 01:27:43; 01:51:33 – 01:52:00.) Locking-out a resident does not seem to be an acceptable part of any discharge plan. Additionally, the Appellant was never given the required written discharge notice – what he referred to as an "eviction." (T. Appellant; 01:37:55.) This was concerning to A.O. Fox as well. (T. MacDonald; 01:54:47.) The Respondent did not rebut these issues during the hearing.

The Respondent must provide written notice to the resident and his designated representative of the discharge and the reasons for the discharge prior to transfer or discharge. 10 NYCRR 415.3(i)(1)(iii)(a). The facility is also required to provide sufficient preparation and orientation to residents to ensure a safe and orderly 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).

The Respondent did not satisfy any of these requirements. Upon return from A.O. Fox, the Appellant found himself locked out of the Respondent's facility only to be told, moments later after gaining entry to the facility, that the Respondent would not take him back. The Respondent neither issued a written discharge notice, nor offered a discharge plan to the Appellant. PHL 2803-z(e) allows nursing homes to discharge a resident with less than 30 days' prior notice when a resident cannot be cared for safely, but in this case there was no prior notice whatsoever, and the discharge reasons are belied by the Appellant's 42 days in the facility before he was sent to

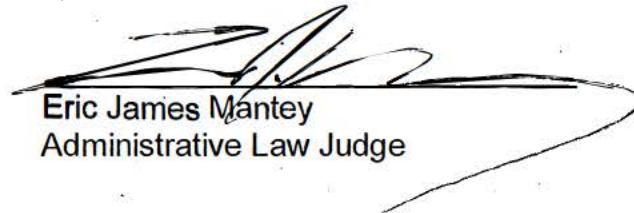
DECISION

The Respondent failed to establish that its determination to discharge the Appellant is correct and that its discharge plan is appropriate.

1. The Respondent is not authorized to discharge the Appellant. The Respondent must readmit the Appellant to the first available semi-private bed before it admits any other person to the facility. 10 NYCRR 415.3(i)(2)(i)(d).

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.

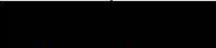
Dated: Menands, New York
March 29, 2024



Eric James Mantey
Administrative Law Judge

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Delhi, New York 13753
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