

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



Department of Health

KATHY HOCHUL
Governor

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

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

April 5, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Terrace View Long Term Care
462 Grider Street
Buffalo, New York 14215

Deborah Bernier, Operations Manager
Terrace View Long Term Care
462 Grider Street
Buffalo, New York 14215

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

**Terrace View Long Term Care
Facility,**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

#DA24-6332

Hearing before: Eric James Mantey
Administrative Law Judge
April 2, 2024
By WebEx Videoconference

Parties: Terrace View Long Term Care Facility
462 Grider Street
Buffalo, New York 14215

By: Deborah Bernier, Operations Manager

[REDACTED]
c/o Terrace View Long Term Care Facility
462 Grider Street
Buffalo, New York 14215

By: *pro se*

JURISDICTION

By notice dated [REDACTED], 2024, Terrace View Long Term Care Facility, (the Respondent), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge [REDACTED] (the 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 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. (00:38.30.)

HEARING RECORD

ALJ Exhibits:

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

Respondent Exhibits:

1. Letter
2. PT Evaluation
3. Cognitive Assessment
4. Care Plan
5. PT Progress Note
6. OT Progress Note
7. (not admitted)
8. Physician Discharge Summary

Appellant Exhibits: None

Respondent Witnesses:

1. Deborah Bernier, Operations Manager
2. Julianna Lindbloom, Discharge Planner
3. Phillip Palisano, Physical Therapist
4. Michael Whitmer, Occupational Therapist

Appellant Witnesses:

1. [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 Buffalo, New York.

2. The Appellant is a [REDACTED]-year-old male admitted to the Respondent's facility on [REDACTED] 2024, for rehabilitation following a month long stay at [REDACTED] to which he was admitted for care and treatment following a [REDACTED] accident during which he was an [REDACTED]. He suffered multiple serious injuries, including [REDACTED], in the accident. (Respondent Exhibits 1 and 8.)

3. The Appellant's treating physician at the Respondent's facility has determined and documented in the facility record that the Appellant is appropriate to be discharged to his home with scheduled appointments to see his primary care provider among various other medical providers. Additional post-discharge services will be arranged by a facility discharge planner. (Respondent Exhibit [Ex.] 8.)

4. The Appellant completed a subacute rehabilitation course with physical therapy. (Respondent Exhibit 8, Testimony [T.] Palisano; 00:18:52, 00:19:34.)

5. The Appellant completed occupational therapy. (T. Wittmer; 00:23:25.)

6. The discharge notice, dated [REDACTED] 2024, advised the Appellant he would be discharged on [REDACTED] 2024, to his home located in [REDACTED] New York because his health has improved sufficiently so he no longer needs the services provided by the facility. (ALJ Ex. I.)

7. 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 are 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. . .

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.. 10 NYCRR § 415.3(i)(1)(ii)(a); 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

The Appellant's treating physician documented in his patient record that he completed physical therapy and is clear to be discharged to his home with a follow-up appointment to be scheduled with his primary care physician in addition to currently scheduled appointments with several other treatment providers. (Respondent Ex. 8.)

The Appellant's physical therapist and occupational therapist documented his therapy progress in the patient record. (Respondent Ex. 2, 5, and 6.) The physical therapist, Philip Palisano, testified credibly that the Appellant can: transfer independently using a walker; ambulate [REDACTED] feet independently with a rolling walker; go up and down [REDACTED] stairs; remain independent even though he is non-weight bearing on his [REDACTED]. (Respondent Ex. 4, T. Palisano; 00:15:58 – 00:18:42.) Durable medical equipment (DME) was ordered and has been delivered to the facility for the Appellant to use upon return to his home. (T. Palisano; 00:16:13 – 00:16:32.) From a physical therapy standpoint, the Appellant has demonstrated the ability to be independent and return to his home with the recommendation that outpatient or home-based physical therapy continues. (T. Palisano; 00:18:52, 00:19:34.) The Appellant is independent in the following areas: grooming, dressing, toileting, bathing (with DME), and simple meal

prep. (T. Wittmer; 00:22:08 – 00:22:50; Respondent Ex. 4.) Shopping and laundry would require help from family. (T. Wittmer; 00:22:51, 00:23:14.) From an occupational therapy standpoint, it is appropriate for the Appellant to return home. (T. Wittmer; 00:23:25.)

Julianna Lindbloom, the Respondent's discharge planner, issued the discharge notice believing the plan to discharge the Appellant to his home with his companion and other support services is appropriate based on the opinions of medical and therapy staff. (T. Lindbloom; 00:10:55 – 00:11:52.) The physician and the interdisciplinary team endorsed the [REDACTED] 2024, discharge date. (T. Lindbloom; 00:12:41.)

The Appellant believes he is not discharge-ready for the following reasons: he has only one handrail at his home stairs, whereas the facility has two handrails; his ability to climb stairs was overstated – he cannot climb [REDACTED] he can do [REDACTED] steps at a time, then rest, then climb another [REDACTED] and so on; he cannot bear weight on his [REDACTED] [REDACTED] shopping would be physically impossible; he does not walk, rather, he hops/hobbles; the microwave at the facility is on a counter, whereas his home microwave is overhead; his companion does not live with him and he is unsure if he can live at her residence; his residence is not suited for a wheelchair; and he cannot prepare meals as indicated. (T. Appellant; 00:28:01 – 00:31:33, 00:37:25 – 00:37:52.) The Appellant is a very strong advocate for himself, but the testimony from the Respondent's witnesses and the documentation the Respondent produced, especially the physician's discharge summary, show the discharge is appropriate.

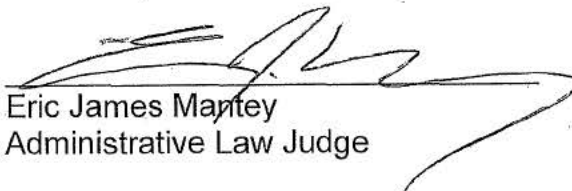
Even though the Respondent met its burden of proving the discharge is necessary and the discharge plan is appropriate, the planned discharge date is not

appropriate. The Appellant rightly takes issue with receiving the discharge notice on [REDACTED], 2024, with the discharge date set for the following day. (T. Appellant; 00:14:40.) Resident discharge requires notice at least 30 days prior to the date of discharge. PHL 2803-z has eliminated the 10 NYCRR § 415.3(i)(1)(iv)(c) exception to that 30-day notice requirement under the discharge grounds in this case. As such, the Respondent cannot discharge the Appellant until at least [REDACTED], 2024.

ORDER

1. The Respondent is authorized to discharge the Appellant in accordance with the [REDACTED], 2024, discharge notice except the discharge date shall not be until at least [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 5, 2024


Eric James Mantey
Administrative Law Judge

To: Terrace View Long Term Care Facility
462 Grider Street
Buffalo, New York 14215
Attn: Deborah Bernier, Operations Manager

[REDACTED]
c/o Terrace View Long Term Care Facility
462 Grider Street
Buffalo, New York 14215