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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 26, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o The Phoenix Rehab & Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201

David Roll, Administrator
The Phoenix Rehab & Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201

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 Phoenix Rehabilitation & Nursing Center,

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

Hearing before: Kathleen Dix
Administrative Law Judge
April 25, 2024
By WebEx Videoconference

Parties: David Roll, Administrator
The Phoenix Rehabilitation & Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201

[REDACTED]
c/o The Phoenix Rehabilitation & Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201

JURISDICTION

By notice dated [REDACTED] 2024, The Phoenix Rehabilitation & Nursing Center, (Respondent or Facility), 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 April 25, 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. (32.22 minutes.) Evidence was received and witnesses were examined. A digital recording of the hearing was made.

HEARING RECORD

ALJ Exhibits:

- 1 Notice of Hearing

Respondent's Exhibits:

1. Notice of Discharge, Admission Record, Cognitive Evaluation, Physician's Progress Note and Summary by Director of Social Services (13 pages)
2. Social Services Progress Notes (13 pages)
3. [REDACTED], Department of Social Services (DSS) Shelter Letter (1 page)
4. Occupational and Physical Therapy Discharge Summaries (10 pages)

Appellant's Exhibits:

None.

Respondent's Witnesses:

1. David Roll, Administrator
2. Phoebe Liew, Social Worker

Appellant's Witnesses:

1. [REDACTED], Appellant

ISSUES

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

FINDINGS OF FACTS

1. The Respondent, The Phoenix Rehabilitation & Nursing 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 Brooklyn, New York.

2. The Appellant is a [REDACTED]-year-old male who was admitted to the Respondent's facility for short term rehabilitation on [REDACTED] 2023, following a hospitalization at [REDACTED] surgical [REDACTED] of [REDACTED] and [REDACTED]. (T. Liew; Exhibit 1.) The Appellant's primary diagnosis is [REDACTED] after care following surgical [REDACTED] (Exhibit 1.)

3. By notice dated [REDACTED], 2024, the Respondent advised the Appellant of its determination to discharge him on [REDACTED], 2024, on the grounds that his health has improved sufficiently such that he no longer needs the services provided by the facility; he no longer needs skilled services. (ALJ Exhibit I; Exhibit 1.)

4. The discharge notice advised the Appellant that he would be discharged to [REDACTED]. (ALJ Exhibit I; Exhibit 1.)

5. The Appellant has been discharged from physical and occupational therapy having achieved the highest practical level in each therapy. (Exhibit 4.)

6. The Facility's doctor has opined that the Appellant is clinically stable and is medically safe to be discharged to a shelter. (Exhibit 1.)

7. The Appellant timely appealed the Respondent's discharge determination and proposed discharge location.

8. The Appellant remains at the Respondent's facility pending the outcome of this 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.

The Respondent has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

As stated in the notice dated [REDACTED] 2024, the Respondent advised the Appellant of its determination to discharge him on [REDACTED], 2024, on the grounds that the Appellant's health has improved so that he no longer requires skilled nursing services. (ALJ Exhibit I; Exhibit 1.)

Phoebe Liew, the Facility's social worker, testified that the Appellant came to the Facility for short term rehabilitation following [REDACTED] and [REDACTED] surgery on his [REDACTED]. The Appellant is independent in all activities of daily living (ADLs), the Appellant currently has no wounds, and the Appellant does not need any skilled medical care. The Appellant is alert and oriented to person, time and place and is independent in making his own decisions. The Appellant expressed that he did not wish to return to his previous apartment asserting that he could not climb the stairs. At the completion of rehabilitation on [REDACTED] 2024, the Appellant was able to climb more than [REDACTED] stairs. (T. Liew 6:49- 7:52; Exhibit 4.)

The Appellant testified on his own behalf. The Appellant testified that while he does not want to stay at the Facility, he also does not want to be discharged to a shelter. The Appellant stated that his primary care doctor told him he would not fare well at a shelter. The Appellant stated that he did not want to return to his previous residence because the social worker there does not like him, but also stated that his previous residence is not available to him. The Appellant stated that he has no family member that is able to take him in. (T. Appellant.)

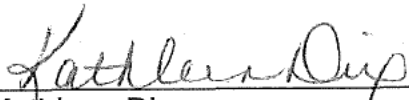
The Respondent has met its burden of establishing that the Appellant is no longer in need of nursing home care. The [REDACTED] Shelter is an available and appropriate discharge location given that the Appellant independent in his ADLs and able to care for himself. However, if the Appellant has secured a home in the community that he wishes to be discharged to, the Facility may discharge the Appellant to that address in lieu of the [REDACTED] Shelter.

DECISION

The Phoenix Rehabilitation & Nursing Center has established that the discharge of the Appellant is necessary and that the discharge plan is appropriate.

1. The Phoenix Rehabilitation & Nursing Center is authorized to discharge the Appellant pursuant to the Notice of Discharge dated [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 26, 2024



Kathleen Dix
Administrative Law Judge

To: The Phoenix Rehabilitation & Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201

[REDACTED]
c/o The Phoenix Rehabilitation & Nursing Center
140 St. Edwards Street
Brooklyn, New York 11201