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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

May 10, 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

#DA24-6352

Hearing before: Eric J. Mantey
Administrative Law Judge
May 9, 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 May 9, 2024, after being adjourned from the original hearing date of April 30, 2024. The hearing was held in accordance with 10 NYCRR § 415.3, 42 CFR § 483.15, Part 51 of 10 NYCRR, and the New York State Administrative Procedure Act. Evidence was received and witnesses were examined. A digital recording of the hearing was made. (Length: 01:15:31.)

HEARING RECORD

ALJ Exhibits:

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

Respondent Exhibits:

1. Admission Record Face Sheet
2. Physician's Progress Note
3. Progress Notes

Appellant Exhibits: None

Respondent Witnesses:

1. Jaimee Hawk, Director of Social Work
2. Beth Doty, Assistant Administrator
3. Monica Jacobs, R.N.
4. Peggy Barber, Director of Rehabilitation

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. (Respondent Exhibit [Ex.] 1.)

3. On [REDACTED], 2024, the Respondent issued a discharge notice advising the Appellant of its determination to discharge him on the grounds that he no longer needs the services the facility provides because his health has improved sufficiently, and on the grounds that the health and/or safety of individuals in the facility would be endangered if he were allowed to remain there. (ALJ Ex. I.)

4. The Appellant believes he is well enough to leave the facility and he no longer wishes to reside there. (Testimony [T.] Appellant, 00:55:13 – 00:55:22 and 01:06:23.)

5. The planned discharge location is the [REDACTED] Department of Social Services ([REDACTED] located at [REDACTED]) (ALJ Ex. I.)

6. The Appellant disagrees with the decision to discharge him to [REDACTED] (T. Appellant, 01:10:02.)

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 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

The Appellant's physician, Dr. Tasnuva Nuhaf Shafin, documented in a Physician's Progress Note that the Appellant is alert, oriented, independent with all Activities of Daily Living (ADLs), and no longer in need of nursing home care. (Respondent Ex. 2). Physician's Assistant progress notes dated [REDACTED] and [REDACTED] 2024, also state the Appellant is independent with his ADLs, no longer in need of nursing home care, and add that he can be discharged to homeless housing. (Respondent Ex. 3.) [REDACTED] 2024, progress notes by Occupational and Physical Therapy state the Appellant no longer needs skilled therapy services. (Respondent Ex. 3.) The testimony received from Ms. Hawk, Ms. Doty, R.N. Jacobs, and Ms. Barber, substantiates these assessments. The Appellant himself admits he can live outside of the facility. (T. Appellant, 00:55:13 – 00:55:22.)

The Appellant disagrees with the discharge plan to transfer him to homeless housing and claims discharge planning was not adequate. (T. Appellant, 01:08:27.) However, the Appellant's clinical record documents many instances of discharge planning. A [REDACTED] 2024, progress note documents Ms. Hawk's discharge planning along with her inclusion of the Appellant's opinion in that planning. (Respondent Ex. 3.)

[REDACTED], and [REDACTED] 2024, progress notes

document additional and continuing efforts by the Respondent to develop a discharge plan. (Respondent Ex. 3.)

The Appellant challenges the authenticity of those notes, insinuating they are a complete fabrication of the truth. (T. Appellant, 01:08:56.) He neither points to anything indicative of forgery nor to any motive the Respondent has to fabricate the notes.

Discharge planning notes show that the Respondent tried to find the Appellant housing with family members and adult care facilities but was unsuccessful. (Respondent Ex. 3.) Homeless housing is the only remaining option for the Appellant. The undesirability of this is understandable, but it is not a valid reason to keep the Appellant in a nursing home when he does not need the services provided by nursing facilities.

Regarding the discharge ground that the Appellant's health has improved so that he no longer needs nursing home care, the Respondent has met its burden of proving the Appellant's discharge is necessary and the discharge plan is appropriate.

The Respondent has also met its burden proving that discharge is necessary because the health and/or safety of individuals in the facility would be endangered if he were to remain there.

Dr. Tasnuva Nuhaf Shafin, documented in a Physician's Progress Note the Appellant's recurrent [REDACTED] at the facility along with his [REDACTED] towards staff, some of which she personally observed, as additional bases for discharging the Appellant. (Respondent Ex. 2.) Dr. Shafin's [REDACTED], 2024, progress note shows the Appellant's behavioral issues began with mere argumentative behavior but, per R.N. Jacobs in a progress note for the same date, then escalated to [REDACTED] and

██████████ (Respondent Ex. 3.) A ██████████, 2024, progress note documents the facility found ██████████ in ██████████ delivered there by the Appellant's ██████████ (Respondent Ex. 3.) His possible ██████████ and ██████████ with staff were noted again on ██████████ 2024. (Respondent Ex. 3.) A search of his room on ██████████ ██████████ 2024, discovered ██████████ ██████████ ██████████, and an ██████████ ██████████ (Respondent Ex. 3.) On ██████████ 2024, while sitting on a nurses' station desk, the Appellant, while other residents were present, began ██████████ at an LPN accusing her of making false statements about him. (Respondent Ex. 3.) On ██████████, 2024, Ms. Doty documented that the Appellant's ██████████ behavior was escalating, and the police were called. (Respondent Ex. 3.)

The Appellant admits to possessing ██████████ but vehemently denies having ██████████ and being ██████████ at the same time he admits an ██████████ was in his room. (T. Appellant, 00:52:40, 00:58:01 – 00:58:08, 00:59:40, and 01:00:02 – 01:00:43.) He claims that the negative statements about him are fabrications. (T. Appellant, 01:00:58.) Throughout his testimony, he implied there is a conspiracy against him. The testimony received from Ms. Hawk, Ms. Doty, and R.N. Jacobs is consistent with the notes contained in the Appellant's clinical record. At least five different staff members have documented the Appellant's behaviors in his clinical record. (Respondent Ex. 3.) That documentation is reliable and is credited.

██████████ behaviors within the facility and in the presence of other residents endangers both residents and staff and is not acceptable. It can, at the very least, cause staff and other residents emotional harm. The Respondent is not obligated to retain the Appellant and it has provided documentation to support his discharge.

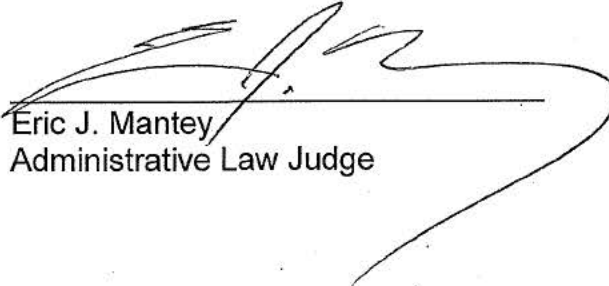
The discharge location is less than ideal, but adult homes to which the Appellant has been referred are not willing to accept him, his [REDACTED] cannot let him live with her again, and he is unwilling to move out of state to live with his [REDACTED] who did testify that she is willing to take him in. (T. [REDACTED] 01:14:20 – 01:14:29 and Respondent Ex. 3.) The Respondent has complied with its responsibility to use its best efforts, in accordance with PHL 2803-z(1)(b), to find other than temporary housing before resorting to discharging him to the local DSS.

DECISION


The Respondent established that its determination to discharge the Appellant on the grounds that he no longer needs the services the facility provides because his health has improved sufficiently, and on the grounds that the health and/or safety of individuals in the facility would be endangered if he were allowed to remain there, is correct.

1. The Grand Rehabilitation and Nursing at Barnwell 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
May 10, 2024


Eric J. 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