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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 30, 2024

**CERTIFIED MAIL/RETURN RECEIPT**

██████████  
c/o Westchester Medical Center  
100 Woods Road  
Valhalla, New York 10595

Michael Bass, Esq.  
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54 State Street, Suite 803  
Albany, New York 12207

Barbara Kukowski, Sr. VP, Deputy Counsel  
Westchester Medical Center  
100 Woods Road  
Valhalla, New York 10595

Tara E. Degan, NHA  
The Grand at River Valley  
140 Main Street  
Poughkeepsie, New York 12601

**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

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 River Valley,**

Respondent,

to discharge him from a residential  
health care facility.

COPY

DECISION  
AFTER  
HEARING

Hearing before: Kathleen Dix  
Administrative Law Judge  
May 20, 2024  
By WebEx Videoconference

Parties: The Grand Rehabilitation and Nursing at River Valley  
140 Main Street  
Poughkeepsie, New York 12601  
By: Michael G. Bass, Esq.

[REDACTED]  
c/o Westchester Medical Center  
100 Woods Road  
Valhalla, New York 10595

Interested Party: Westchester Medical Center  
100 Woods Road  
Valhalla, New York 10595  
By: Barbara Kukowski, Esq. Sr. Vice President, Deputy Counsel

## JURISDICTION

By notice dated [REDACTED], 2024, The Grand Rehabilitation and Nursing at River Valley (Respondent or Facility), a residential health care facility subject to Article 28 of the PHL, determined to discharge / transfer [REDACTED] (Appellant) from care and treatment in its Facility. Westchester Medical Center (Hospital) on behalf of 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 May 20, 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. (1h 38m.) Evidence was received and witnesses were examined. A digital recording of the hearing was made.

## HEARING RECORD

ALJ Exhibits:

I. Notice of Hearing and Notice of Discharge or Transfer

Facility's Exhibits:

- A. Behavioral Progress Notes (21 pages including cover sheet)
- B. Social Work Progress Notes (38 pages including cover sheet)

Hospital's Exhibits:

- 1. PASRR Level [REDACTED] Outcome
- 2. PRI
- 3. Admission Face Sheet
- 4. Medical Clearance
- 5. [REDACTED] Clearance
- 6. [REDACTED] Progress Notes

Facility's Witnesses:

- 1. Teresa Dirac, Director of Nursing
- 2. Amandeep Singh, Consulting Mental Health Nurse Practitioner
- 3. Amit Saxena, M.D., Medical Director
- 4. Elizabeth Sofield, Director of Social Work

Hospital's Witnesses:

None

## ISSUES

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

## FINDINGS OF FACTS

1. The 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 Poughkeepsie, New York.

2. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility in 2019. The Appellant has diagnoses which include [REDACTED] [REDACTED] (Exhibit A, T. Dirac 11:15, T. Saxena 55:55.).

3. By notice dated [REDACTED], 2024, the Respondent advised the Appellant of its determination to discharge him on that same date. The notice of transfer/discharge does not indicate on what grounds the Respondent is seeking to transfer/discharge the Appellant. (ALJ Exhibit I).

4. The discharge notice advised the Appellant he would be discharged to "[REDACTED] and desired bed hold". (ALJ Exhibit I). [REDACTED] [REDACTED] an acute care facility which is part of Westchester Medical Center. (T. Kukowski 42:18.)

5. The Appellant was admitted to the Hospital on [REDACTED] 2024 with [REDACTED]. (Exhibits 1, 5, 6.)

6. The Hospital is an interested party as the Appellant is currently an inpatient there.

7. The Hospital timely appealed the Facility's discharge determination and proposed discharge location.

8. The Appellant remains at the Hospital 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:

(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;

(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;

(3) the safety of individuals in the facility is endangered; or

(4) the health of individuals in the facility is endangered;

(b) transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third-party insurance) a stay at 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 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)(l)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(A).

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

### Grounds for Discharge

There is a regulatory framework for a residential health care facility to follow prior to the discharge of a resident. Before the Facility seeks to discharge the Appellant, the Facility must notify the resident and designated representative of the discharge and the reasons for the discharge. 10 NYCRR § 415.3(i)(1)(iii)(a). In addition, before the Facility seeks to discharge the Appellant, 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)(l)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(A).

The Notice of Discharge issued by the Respondent does not identify a reason for the Appellant's transfer/discharge as is required by 10 NYCRR § 415.3(i)(2)(iv). There is a note on page 2 of the Notice of Discharge that states that the Appellant [REDACTED] but the note does not contain any details regarding when the alleged [REDACTED] happened or the details thereof. Contained in the Social Work notes entered into evidence by the Respondent is a note dated [REDACTED] 2024, indicating that the Appellant [REDACTED]. (Exhibit B). This note was made more than three weeks prior to the Notice of Discharge being issued and there was no testimony or evidence presented at the hearing regarding the Appellant [REDACTED] or if that was the reason that the Appellant was sent to an acute care facility pursuant to the [REDACTED], 2024 discharge notice. The Appellant's medical record was not presented at the hearing; the hearing record contains no medical evidence from the Appellant's treating physician supporting the Facility's decision to discharge him.

The Facility presented four witnesses who all testified to [REDACTED] behavior exhibited by the Appellant while at the Facility and contended that the Facility is not an appropriate placement for the Appellant. Documentation showing the Facility's inability to meet the resident's needs must be made by the resident's physician and must include the specific resident needs the facility could not meet, the facility's efforts to meet those needs, and the specific services the receiving facility will provide to meet the needs of the resident that cannot be met at the current facility. In a "Dear Nursing Home Administrator" letter (DAL) dated August 20, 2019, and re-issued in October 2022, (DAL-NH 19-07), the Department clarified the requirement to permit residents to return to the nursing home after transfer to an acute care setting and the documentation required for a facility-initiated transfer or discharge. The DAL stated that to demonstrate that any of the permissible circumstances to initiate transfer or discharge of a resident under 42 C.F.R. § 483.15(c)(1)(i) have occurred, the resident's medical record **must** show documentation of the basis for the transfer or discharge and this documentation **must** be made before, or as close as possible to the actual time of transfer/discharge. (*Emphasis supplied.*)

Here, the Facility offered no medical evidence from a physician, and thus there is none in the hearing record, documenting a reason for the Appellant's discharge. The Appellant has resided at the Facility since 2019. A social work note as far back as [REDACTED], 2019 shows that the Appellant exhibited similar [REDACTED] behavior as existed at the time he was sent to the hospital earlier this year. (Exhibit B.) As stated in the DAL, "Facilities are required to determine their capacity and capability to care for the residents they admit, so in the absence of atypical changes in residents' conditions, it should be rare that facilities that properly assess their capacity and capability to care for a resident then discharge that resident based on the inability to meet the resident's needs."

The Facility has failed to meet its regulatory obligation to ensure the documentation in the medical record is complete and that the Appellant's physician documents the reasons for discharge. 10 NYCRR 415.3(i)(l)(ii)(a) and (iii)(b).

Finally, the Respondent asserts that it transferred the Appellant on [REDACTED] 2024 while the Hospital records show an admission date of [REDACTED] 2024. No

explanation was given for this discrepancy or where the Appellant was between those dates.

The Facility has failed to establish that the Appellant's discharge was necessary.

#### Discharge Plan

The regulations also require that the Facility develop a discharge plan with the participation of the Appellant and her family and provide sufficient preparation and orientation to the Appellant to ensure a safe and orderly discharge from the facility in the form of a discharge plan which addresses the medical needs of the Appellant and how these will be met after discharge as is required by PHL § 2803-z, 10 NYCRR 415.3(i), and 10 NYCRR § 415.11(d). No evidence was presented at the hearing that any discharge planning was done in accordance with the law and regulations, thus the Facility did not meet its statutory and regulatory requirements. In addition, the discharge notice advised the Appellant he would be discharged to the Hospital. (ALJ Exhibit I.) In the same DAL mentioned above, in the frequently asked questions, question 8, the Department placed all residential health care facilities on notice that discharges to hospitals are not appropriate discharge locations.

#### **CONCLUSION**

The Facility failed to follow the statutory and regulatory requirements for a proper discharge and thus failed to meet its statutory and regulatory obligations. The discharge notice fails to state a reason for the discharge, there is no evidence that the necessity of the discharge was documented in the Appellant's medical record by a physician, and the Hospital is not an appropriate discharge location.


#### **DECISION**

The Grand Rehabilitation and Nursing at River Valley has not established that the discharge of the Appellant was necessary and that the discharge plan was

appropriate.

1. The Grand Rehabilitation and Nursing at River Valley is not authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED] 2024. The Grand Rehabilitation and Nursing at River Valley 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  
May 30, 2024

  
\_\_\_\_\_  
Kathleen Dix  
Administrative Law Judge

To: Tara E. Degan, Administrator  
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