



Department of Health

KATHY HOCHUL
Governor

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

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

June 11, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Beth Abraham Center
612 Allerton Avenue
Bronx, New York 10467

Erica Schwartz, MSW
Beth Abraham Center
612 Allerton Avenue
Bronx, New York 10467

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

██████████

Appellant,

from a determination by

Beth Abraham Center for Rehabilitation and Nursing,

Respondent,

to discharge him from a residential
health care facility.

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DECISION

CASE #6378-2024

Hearing Before:

Kimberly A. O'Brien
Administrative Law Judge (ALJ)

Hearing Date:

June 10, 2024
By videoconference

Parties:

Beth Abraham Center for Rehabilitation and Nursing
612 Allerton Avenue
Bronx, New York
By: Saul Silbermintz, Nursing Home Administrator
C/o Erica Schwartz, Director of Social Work (DSW)
eschwartz@bethabrahamcenter.net

██████████

Beth Abraham Center for Rehabilitation and Nursing
C/o Erica Schwartz, DSW
eschwartz@bethabrahamcenter.net

JURISDICTION

[REDACTED] [REDACTED]
 Beth Abraham Center for Rehabilitation and Nursing (the Respondent or Beth Abraham), is a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge [REDACTED] [REDACTED] (the Appellant) from care and treatment in its nursing home. Pursuant to 10 NYCRR 415.3, the Appellant appealed the discharge determination to the New York State Department of Health.

The ALJ admitted one exhibit into the record which includes the [REDACTED] 2024 Discharge Notice, Admission Record, and [REDACTED]/2024 Physician Letter” (ALJ 1.) The Respondent presented witnesses: Arash Arvin, M.D., Evan Stein, Assistant Director of Rehabilitation, and Robin Tucker, Social Worker. The Appellant asked questions of the Respondent’s witnesses and testified on his own behalf. The hearing was held, and an audio recording was made.

FINDING OF FACTS

1. Beth Abraham is a residential health care facility, or nursing home, located in Bronx, New York. The Appellant, age [REDACTED] was admitted to the facility on [REDACTED] 2021, for short term rehabilitation after hospitalization. The Appellant suffered a “[REDACTED] and his diagnoses include [REDACTED]. (ALJ Exhibit 1; Testimony Dr. Arvin.)
2. By notice dated [REDACTED], 2024, the Respondent advised the Appellant that it had determined to discharge him on the grounds that his health has improved sufficiently that he no longer needs the services provided by the facility. The Appellant was advised that he would be discharged to the [REDACTED] [REDACTED] [REDACTED] [REDACTED] (the shelter). (ALJ Exhibit I.)

3. The Appellant is alert and oriented and is independent with his care and decision making. The Appellant has been discharged from rehabilitation therapy. He ambulates about the facility and in the community, when out on pass, without using a wheelchair. (Testimony Arvin, Stein, Tucker; ALJ Exhibit 1.)

4. Dr. Arvin and the Appellant's interdisciplinary care team at the facility have determined that he is not in need of nursing home care and his medical needs can be met in the community and discharge to a shelter is appropriate. (Testimony Arvin, Stein, Tucker ; ALJ Exhibit 1.)

5. The Respondent has assisted the Appellant with enrolling in the "[REDACTED]" community housing program to locate an apartment in the community. The Respondent attempted to secure an alternative placement for the Appellant at an Assisted Living Facility (ALF) while the Appellant waits for an apartment to become available. (Testimony Tucker.)

6. The Appellant remains at Beth Abraham pending the outcome of this proceeding.

ISSUES

Has the Respondent established that the transfer is necessary, and the discharge plan is appropriate?

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 are set forth in Department regulations. A resident may be transferred when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that 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. 10 NYCRR 415.3(i)(1)(i)(a)(2).

The facility has the burden of proving that the discharge or transfer is necessary and the discharge plan appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

Dr. Arvin, the Appellant's consulting physician, testified that he and the care team at Beth Abraham have determined that the Appellant is no longer in need of nursing home care. The Appellant has a number of chronic conditions that can be addressed in the community by his primary care physician. The Appellant is medically stable and discharge to the shelter is appropriate.

Mr. Stein testified that the Appellant is independent with transfers and ambulates more than [REDACTED] without using a wheelchair. In the past the Appellant has needed a wheelchair, but he does not currently require one. The Appellant could still benefit from using a wheelchair when he is extremely tired.

Ms. Tucker testified that since or about [REDACTED] 2024 she has been working with the Appellant and an [REDACTED] transition coordinator to find an apartment for him. There is no timeframe for when an apartment will become available. The Appellant has recently been assigned an [REDACTED] housing coordinator who will continue to work

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with him upon discharge from the facility. Beth Abraham's attempts to secure an ALF placement as an alternative to the shelter discharge have been rejected by the Appellant.


The Appellant testified that he uses a wheelchair when he gets tired and believes that he should remain at Beth Abraham until he is stronger, and an apartment becomes available through ■■■■. He does not dispute that he ambulates about the facility without using a wheelchair and goes out on pass into the community without it. The Appellant acknowledges that Beth Abraham attempted to place him in an ALF as an alternative to the shelter placement. The Appellant does not wish to go to an ALF or the shelter because he believes it is not good for his health to be around a lot of people.

The documentary evidence, and the testimony of Dr. Arvin, Mr. Stein and Ms. Tucker show that the Appellant no longer requires the care provided by the facility. The Respondent has made reasonable attempts to work with the Appellant to secure an ALF placement, which the Appellant has rejected. At the time of the hearing, the Appellant continued to reject an ALF placement. The shelter is available and appropriate to meet the Appellant's needs. The Appellant no longer needs the care the facility provides and cannot remain at the facility waiting for an apartment to become available.

DECISION

The Respondent has established valid grounds for the discharge of the Appellant and that the discharge plan is appropriate. The Respondent is authorized to discharge the Appellant in accordance with the ■■■■ 2024 discharge notice.

Dated: Albany, New York
June 11, 2024



Kimberly A. O'Brien
Administrative Law Judge

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