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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

June 27, 2024

CERTIFIED MAIL/RETURN RECEIPT

Meir Newhouse, NHA
Sapphire Nursing at Wappingers
37 So Messier Avenue
Wappingers Falls, New York 12590

██████████ ██████████
c/o Sapphire Nursing at Wappingers
37 So. Messier Avenue
Wappingers Falls, New York 12590

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

██████████ ██████████

Appellant,

from a determination by

**Sapphire Nursing at
Wappingers,**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

#DA24-6390

Hearing before: Eric James Mantey
Administrative Law Judge
June 24, 2024
By WebEx Videoconference

Parties: Sapphire Nursing at Wappingers
37 So. Messier Avenue
Wappingers Falls, New York 12590

By: Meir Newhouse, Administrator

██████████ ██████████
c/o Sapphire Nursing at Wappingers
37 So. Messier Avenue
Wappingers Falls, New York 12590

By: *pro se*

JURISDICTION

By notice dated [REDACTED], 2024, Sapphire Nursing at Wappingers, (the Respondent), 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 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 initially scheduled for June 17, 2024. The Appellant asked for an adjournment so he could have time to receive and review his medical records. His request was granted. The hearing was held on June 24, 2024, in accordance with Part 415 of 10 NYCRR; Part 483 of Title 42 of the United States Code of Federal Regulations (CFR); and New York State Administrative Procedure Act § 301(1). Evidence was received and witnesses were examined. A digital recording of the hearing was made. (Length – 01:07:03.)

HEARING RECORD

ALJ Exhibits:

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

Respondent Exhibits:

- A. Doctor Note
- B. PT Discharge Summary
- C. PT Progress Note [REDACTED], 2024
- D. Rehab Summary
- E. SW Note [REDACTED] 2024
- F. SW Note [REDACTED] 2024
- G. SW Summary
- H. Cognitive Assessment

Appellant Exhibits: None

Respondent Witnesses:

1. Meir Newhouse, Administrator
2. Cynthia Cuccia Montagnino, Social Worker
3. Lalyla Frasier, Director of Nursing
4. Darlene Bates, Rehab Director

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 Wappingers Falls, New York.

2. The Appellant is a [REDACTED]-year-old male who was initially admitted to the Respondent on [REDACTED], 2022, for treatment related to [REDACTED]. (Respondent's Exhibit [Ex.] D.)

3. The Appellant's treating physician at the Respondent's facility determined and documented that the Appellant is appropriate to be discharged to a hotel/shelter because his health has improved, and he is medically stable. (Respondent Ex. A.)

4. The Appellant completed physical therapy. (Respondent Ex. B and C.)

5. The Appellant completed occupational therapy. (Respondent Ex. D.)

6. The Appellant is independent in all Activities of Daily Living (ADL) and is independent in wheelchair mobility indoors and outdoors. (Respondent Ex. D.)

7. The Respondent engaged the Appellant in discharge planning. The Appellant was receptive to discharging to an Assisted Living Facility (ALF). Referrals

were made to multiple ALFs. The Appellant refused bed offers from two ALFs and therefore was informed that the only other option could be a discharge to a hotel/shelter. (Respondent Ex. E and G.)

8. The discharge notice, dated [REDACTED], 2024, advised the Appellant he will be discharged on [REDACTED] 2024, to the Department of Social Services located at [REDACTED] [REDACTED] because his health has improved sufficiently so he no longer needs the services provided by the facility. (ALJ Ex. I.)

9. 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

Prior to and during the hearing, the Appellant asserted that the Respondent did not provide him with meaningful access to his medical records. However, the Appellant requested and received an adjournment to allow him time to receive and thoroughly review his records.

The Respondent offered digital copies as well as physical copies at a cost. Mr. [REDACTED] did not want to pay the fee associated with receiving a hard copy of the records. As an alternative, the Respondent allowed the Appellant to view his records on a computer. The Appellant nonetheless continues to assert he was deprived of access to records he believes would show he is not medically ready to be discharged from the nursing home. His patient record clearly documents the discharge is necessary and the discharge plan is appropriate. Testimony substantiates those records.

The Appellant completed occupational therapy and physical therapy; he can independently ambulate in his wheelchair, and he can self-transfer in and out of bed, his wheelchair, and when toileting and showering. He is independent in all other ADLs. (T. Bates, 00:18:22 – 00:20:01.) Therapy records corroborate this testimony. (Respondent Ex. B, C, and D.) His BIMS score is [REDACTED] demonstrating that his cognitive functioning is intact. (Respondent Ex. H.) Dr. Mohammed Munim cleared the Appellant for discharge because therapy ended, and his health significantly improved. (Respondent Ex. A.) Prior to facility admission, the Appellant lived in a hotel where he used a wheelchair. (Respondent Ex. A.) Dr. Munim asserts that a discharge to similar housing is appropriate. (Respondent Ex. A.) All the above was considered when determining to discharge the Appellant. (T. Newhouse, 00:29:38.)

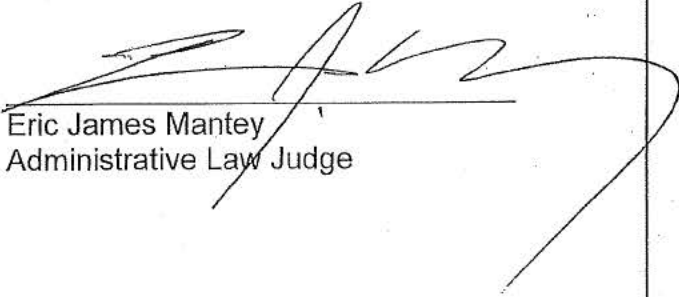
The Appellant took part in discharge planning as early as [REDACTED] 2023 when a social worker learned he no longer needed the level of care provided by a nursing home. (T. Cuccia-Montagnino, 00:08:28.) That is when the Respondent started to send referrals to assisted living facilities at which the Appellant could live. The Appellant can also live independently in the community. (T. Cuccia-Montagnino, 00:10:08.) Ms. Cuccia-Montagnino's testimony is consistent with documentation showing discharge planning, with the Appellant's input, occurred and he is medically stable to live outside of the nursing home. (Respondent Ex. E, F, and G.)

The Respondent is prepared to arrange transportation for the Appellant to go to a local social services office where arrangements for him to live in a hotel will be made. (T. Cuccia-Montagnino, 00:11:03.) He will be sent there with his medications and prescriptions. (T. Cuccia-Montagnino, 00:11:52.)

ORDER

1. The Respondent is authorized to discharge the Appellant in accordance with the [REDACTED], 2024, discharge notice.
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
June 27, 2024


Eric James Mantey
Administrative Law Judge

To: Sapphire Nursing at Wappingers
37 So. Messier Avenue
Wappingers Falls, New York 12590
Attn: Meir Newhouse
mnewhouse@wfallscare.com

[REDACTED] [REDACTED]
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