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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

July 5, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Huntington Hospital
270 Park Avenue
Huntington, New York 11743

Alma Aspiras
Huntington Hospital
270 Park Avenue
Huntington, New York 11743

Eve Koopersmith, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road, Suite 600
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Edline Severe Joseph, NHA
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378 Syosset Woodbury Road
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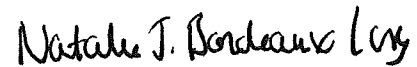
RE: In the Matter of ██████████ ██████████ – Discharge Appeal

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,

A handwritten signature in black ink that reads "Natalie J. Bordeaux" followed by a stylized flourish.

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

COLD SPRING HILLS,

Respondent,

to discharge him from a residential health care facility.

COPY

DECISION

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Date: June 24, 2024

Parties: ██████████ ██████████
c/o Huntington Hospital
270 Park Avenue
Huntington, New York 11743

By: Adam Kahn, Esq.
La Salle, La Salle, & Dwyer, P.C.
309 Sea Cliff Avenue
Sea Cliff, New York 11579

Cold Spring Hills
378 Syosset Woodbury Road
Woodbury, New York 11797

By: Edline Severe Joseph, Nursing Home Administrator
and
Eve Koopersmith, Esq.
Garfunkel Wild, P.C.
111 Great Neck Road, Suite 600
Great Neck, New York 11021

Interested Party: Huntington Hospital
270 Park Avenue
Huntington, New York 11743
By: Alma Aspiras, Director of Case Management
and Social Work

JURISDICTION

On [REDACTED], 2024, Cold Spring Hills (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), transferred [REDACTED] [REDACTED] (the Appellant) to [REDACTED] Rehabilitation and Healthcare ([REDACTED]). The Appellant appealed the discharge to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) 415.3(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations; the New York State Administrative Procedure Act; and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. A recording of the proceeding was made.

HEARING RECORD

ALJ Exhibits: 1 – Letter with Notice of Hearing and Transfer/Discharge Notice [REDACTED] 24)

Facility Witnesses: Jenna Lacognata, Director of Social Work at Cold Spring Hills
Jean Emmanuel, Director of Respiratory Therapy Cold Spring Hills

Facility Exhibits: 1 – Resident Face Sheet
2 – BIMS
3 – Summary of Events
4 – PRI
5 – Email thread
6 – Social Work Progress Notes

Appellant Witnesses: [REDACTED] [REDACTED] Appellant
Alma Aspiras, Director of Case Management & Social Work at Huntington
Annmarie [REDACTED] Director of Social Work at [REDACTED]
Stephanie [REDACTED] Wound Care & Administrative Nurse at [REDACTED]

Appellant Exhibits: None

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who requires skilled nursing care. (Facility Exhibit [Ex.] 1.)
2. The Appellant was first admitted to the Facility on [REDACTED] 2023. (Facility Ex. 1.)
3. The Appellant is cognitively intact, with a Brief Interview for Mental Status (BIMS) score of [REDACTED] as of [REDACTED] [REDACTED] 2024. (Facility Ex. 2.)
4. The Appellant has expressed overall satisfaction with the care he received at the Facility, however he has filed grievances against the Facility. The subject of the grievances appears to relate to the Facility's response time to the Appellant activating the call bell system during the night. (Testimony [T.] Lacognata, [REDACTED])
5. On [REDACTED] 2024, a care plan meeting was held with the Appellant, the Facility's interdisciplinary team (IDT) and an ombudsman. (Facility Ex. 3.)
6. The Facility maintains that at the care plan meeting the Appellant expressed a desire to be transferred to a different Facility, resulting in the Facility sending referrals to six different skilled nursing facilities. (Facility Ex. 3; T. Lacognata.)
7. The Appellant maintains that at the care plan meeting he stated that he would consider transfer to a different facility, but that he never requested to be transferred. (T. [REDACTED])
8. The Appellant was accepted for admission at [REDACTED] (Facility Ex. 3; T. Lacognata.)
9. On [REDACTED] 2024, the Facility issued a Transfer/Discharge Notice discharging the Appellant to [REDACTED]. The grounds cited for the discharge in the Notice is that "[t]he resident and/or their representative are requesting transfer to another facility for the continuation of care." The Notice further specifies that [REDACTED] is requesting discharge to another facility. IDP/NP aware & in agreement with discharge to [REDACTED] (ALJ Ex. I.)
10. The Appellant signed the Transfer/Discharge Notice. (ALJ Ex. I.)
11. On [REDACTED] 2024, the Appellant was discharged to [REDACTED] (Facility Ex. 3.)

12. On [REDACTED] 2024, the Appellant was admitted from [REDACTED] to Huntington Hospital due to [REDACTED]. (T. Aspiras.)

13. The Appellant is stable and ready for discharge from the hospital. (T. Aspiras.)

14. The Appellant does not wish to return to [REDACTED] but instead desires to return to the Facility. (T. [REDACTED])

15. The Appellant has remained at the hospital during the pendency of the appeal.

ISSUES

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

APPLICABLE LAW

A residential health care facility, also referred to in the Department of Health Rules and Regulations as a nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. (PHL § 2801[2][3]; 10 NYCRR 415.2[k].)

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations. (10 NYCRR 415.3[i][1].) The regulations identify transfer and discharge to include "movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge shall not refer to movement of a resident to a bed within the same certified facility, and **does not include transfer or discharge made in compliance with a request by the resident, the resident's legal representative or health care agent, as evidenced by a signed and dated written statement**, or those that occur due to incarceration of the resident." (10 NYCRR 415.3[i] [emphasis added].)

Absent a voluntary transfer or discharge, and excluding reasons of nonpayment and facility closure, a resident may be transferred only when:

- (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;

(10 NYCRR 415.3[i][1][i][a].)

Facilities are required to provide written notice of transfer or discharge that includes the following:

- (a) The reason for transfer or discharge;
- (b) The specific regulations that support, or the change in Federal or State law that requires, the action;
- (c) The effective date of transfer or discharge;
- (d) The location to which the resident will be transferred or discharged;
- (e) a statement that the resident has the right to appeal the action to the State Department of Health, which includes:
 - (1) an explanation of the individual's right to request an evidentiary hearing appealing the decision;
 - (2) the method by which an appeal may be obtained;
 - (3) in cases of an action based on a change in law, an explanation of the circumstances under which an appeal will be granted;
 - (4) an explanation that the resident may remain in the facility (except in cases of imminent danger) pending the appeal decision if the request for an appeal is made within 15 days of the date the resident received the notice of transfer/discharge;
 - (5) in cases of residents discharged/transferred due to imminent danger, a statement that the resident may return to the first available bed if he or she prevails at the hearing on appeal; and
 - (6) a statement that the resident may represent him or herself or use legal counsel, a relative, a friend, or other spokesman;
- (f) the name, address and telephone number of the State long term care ombudsman;
- (g) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act;

(h) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(10 NYCRR 415.3(i)(1)(v).)

Facilities are also required to "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."

(10 NYCRR 415.3(i)(1)(vi).)

Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii)(b), the Facility bears the burden to prove a discharge is necessary and appropriate.

DISCUSSION

The Appellant was initially admitted to the Facility on [REDACTED] 2023. Since then, he has gone to the hospital on multiple occasions. On [REDACTED], 2024, the Appellant was transferred to [REDACTED]. Three days later, the Appellant went to the hospital, where he has remained. It is undisputed that the Appellant needs skilled nursing care, and undisputed that he is medically stable and ready for discharge from the hospital. (T. Aspiras.)

Jenna Lacognata, Director of Social Work at Cold Spring Hills, testified that the Appellant requested to be transferred to a different facility and that he was voluntarily transferred to [REDACTED] in accordance with his wishes. Ms. Lacognata's social work progress notes on [REDACTED] 2024, reflect that the option of sending patient review instruments (PRIs) to other facilities was discussed at the care plan meeting on that date. (Facility Ex. 6.) Subsequent social work progress note entries show efforts of the Facility to locate an alternative skilled nursing facility for the Appellant, an acceptance of the Appellant at [REDACTED] transfer to [REDACTED] and follow-up communication with the Appellant. There is no indication in any of the notes that the Appellant did not wish to leave the Facility. To the contrary, the contemporaneous notes

support that the Appellant agreed with being transferred to [REDACTED] and that he appreciated the assistance of the staff at the Facility in making the arrangements. (Facility Ex. 6.)

The Appellant testified that he desires to go back to the Facility rather than to [REDACTED]. The Appellant alleged that [REDACTED] is unable to meet his [REDACTED] needs. He also maintains that he was involuntarily transferred to [REDACTED] and that he never requested to go there. The Appellant testified that he agreed to consider transfer to another facility, but adamantly denies that he requested to be transferred. On [REDACTED] 2024, the Appellant signed a Transfer/Discharge Notice discharging the Appellant to [REDACTED] and citing as the grounds for discharge that "[t]he resident and/or their representative are requesting transfer to another facility for the continuation of care" and noting that "[REDACTED] is requesting discharge to another facility. IDP/NP aware & in agreement with discharge to [REDACTED] (ALJ Ex. I.) The Appellant testified that he was unaware of what he was signing because of issues with his [REDACTED] and believed he was signing a different type of document.

The Appellant also presented the testimony of [REDACTED] Director of Social Work at [REDACTED] and [REDACTED] Wound Care & Administrative Nurse at [REDACTED]. Neither Ms. [REDACTED] nor Ms. [REDACTED] reviewed the Appellant's PRI or were involved in determining whether to admit the Appellant to [REDACTED]. Ms. [REDACTED] and Ms. [REDACTED] both testified that they were of the impression that the Appellant was a smoker, which is not true, and that he was being transferred to [REDACTED] because the Facility was discharging all of its patients that smoked. Ms. [REDACTED] testified that the Appellant expressed uncertainty for the reason of his transfer to [REDACTED]. Both Ms. [REDACTED] and Ms. [REDACTED] testified that [REDACTED] is unable to meet the [REDACTED] and [REDACTED] needs of the Appellant.

On rebuttal, Ms. Lacognata testified as to her discussions with the Admissions Director at [REDACTED] regarding the Appellant. Ms. Lacognata testified that all pertinent information relating to the Appellant's skilled nursing needs was transmitted to [REDACTED] prior to transfer. This assertion is

supported by an email chain of communication between the Facility and [REDACTED] as well as the PRI that was sent to [REDACTED] (Facility Exs. 4 & 5.)

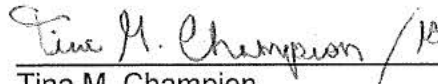
The hospital has cleared the Appellant to return to [REDACTED] [REDACTED] is unwilling to accept the Appellant back. (T. Aspiras, [REDACTED] [REDACTED] The Appellant also does not wish to go to [REDACTED] (T. [REDACTED] The Appellant instead desires to return to the Facility. However, in considering the totality of evidence, the Facility has met its burden to show that the Appellant's transfer to [REDACTED] was voluntary, and it is therefore not required to readmit the Appellant.

The Appellant currently has no acute condition requiring hospital admission. While he does not desire to return to [REDACTED] no other skilled nursing facility has agreed to accept the Appellant in response to the hospital canvassing other facilities. (T. Aspiras.) [REDACTED] is not a party to this proceeding and therefore cannot be ordered herein to readmit the Appellant. However, [REDACTED] previously accepted the Appellant into its care and it is noted that [REDACTED] must now take responsibility for either accepting the Appellant back from the hospital or engaging in appropriate discharge planning consistent with its obligations pursuant to applicable laws and regulations.

DECISION

Cold Spring Hills has established that the Appellant's transfer to [REDACTED] Rehabilitation and Healthcare was voluntary pursuant to 10 NYCRR 415.3(i) and it does not need to readmit the Appellant. 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: Albany, New York
July 5, 2024



Tina M. Champion
Administrative Law Judge

TO:

[REDACTED]
c/o Huntington Hospital
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Huntington, New York 11743
[REDACTED]

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