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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 28, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Bellhaven Center for Rehabilitation
and Nursing Care
110 Beaver Dam Road
Brookhaven, New York 11719

Glenn Grodner, DSW
Bellhaven Center for Rehabilitation
and Nursing Care
110 Beaver Dam Road
Brookhaven, New York 11719

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

**Bellhaven Center for Rehabilitation
and Nursing Care,**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

#DA24-6396

Hearing before: Eric J. Mantey
Administrative Law Judge
June 25, 2024
By WebEx Videoconference

Parties: Bellhaven Center for Rehabilitation and Nursing Care
110 Beaver Dam Road
Brookhaven, New York 11718

By: Glenn Grodner, Director of Social Work

██████████ ██████████

c/o Bellhaven Center for Rehabilitation and Nursing Care
110 Beaver Dam Road
Brookhaven, New York 11718

By: *pro se*

JURISDICTION

By notice dated [REDACTED] 2024, Bellhaven Center for Rehabilitation and Nursing Care (Respondent), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge [REDACTED] [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 June 25, 2024. The hearing was held in accordance with 10 NYCRR § 415.3, 42 CFR § 483.15, Part 51 of 10 NYCRR, 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 – 00:37:20.)

HEARING RECORD

ALJ Exhibits:

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

Respondent Exhibits:

- A. Admission Record Face Sheet
- B. Physician's Discharge Note
- C. Discharge Progress Note
- D. Progress Notes

Appellant Exhibits: None

Respondent Witnesses:

1. Glenn Grodner, Director of Social Work

Appellant Witnesses:

1. [REDACTED] [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 Brookhaven, New York.

2. The Appellant is an [REDACTED]-year-old male who was last admitted to the Respondent's facility on [REDACTED] 2022. (Respondent Exhibit [Ex.] A.)

3. The Respondent observed the Appellant [REDACTED] another Resident and documented that as well as his [REDACTED] on [REDACTED] 2022. On [REDACTED] [REDACTED] 2022, the Respondent documented that the Appellant [REDACTED] [REDACTED] staff members that make them feel uncomfortable. It is further documented that the Appellant makes [REDACTED] statements. On [REDACTED] 2023, the Respondent documented that the Appellant [REDACTED] another resident's [REDACTED]. On [REDACTED], 2023, the Respondent received a complaint from a resident stating the Appellant [REDACTED] [REDACTED] her. On [REDACTED], 2024, the Appellant allegedly entered another resident's room, [REDACTED], and continued to [REDACTED] even though he was told to stop. (Respondent Ex. D.)

4. Beginning in 2021, the Respondent addressed the Appellant's inappropriate behavior with him by providing education and most recently 1:1 supervision. (Respondent Ex. D.)

5. On [REDACTED] 2024, the Respondent issued a discharge notice advising the Appellant of its determination to discharge him on the ground that the health and/or safety of individuals in the facility would be endangered if he were allowed to remain there. (ALJ Ex. I.)

6. The planned discharge location is [REDACTED] [REDACTED]. (ALJ Ex. I.)

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. 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:

...

(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

A Respondent resident accused the Appellant of [REDACTED] without her [REDACTED] on or about [REDACTED] 2024. (Respondent Ex. D; Testimony [T.] Grodner, 00:04:18.) The Appellant allegedly [REDACTED] the resident's [REDACTED]. (Respondent Ex. D.) The resident was not physically injured by the Appellant's alleged [REDACTED]. (T. Grodner, 00:08:45.)

This was not the first time the Appellant had inappropriate physical contact with another resident. [REDACTED] between the Appellant and other residents, in his mind, was [REDACTED] however, the Appellant was informed that the people he [REDACTED] may not have the [REDACTED] to those [REDACTED]. (Respondent Ex. D.) Social distancing education performed with the Appellant is first documented in a case note dated [REDACTED] 2021, and again in a note dated [REDACTED] 2022, after he was [REDACTED] another resident. He was again educated on not [REDACTED] on or about [REDACTED], 2023, when Respondent staff received a report that he [REDACTED] another resident's [REDACTED] (Respondent Ex. D.)

The Respondent believes that the Appellant's [REDACTED] behavior is escalating, therefore requiring his discharge to another facility to protect the safety of the Respondent's other residents. (T. Grodner, 00:15:14, 00:15:30 – 00:15:51, and

00:23:43.) The planned discharge location is a facility located [REDACTED] from the Respondent. (T. Grodner, 00:15:58.)

A progress note signed by Dr. Dinesh Sethi documents the Appellant's [REDACTED] behavior and supports the Respondent's determination that the safety or health of individuals in its facility is endangered. Dr. Sethi also noted that the Appellant can function at, and is medically suitable for, a discharge location such as the planned location. (Respondent Ex. B.)

The Appellant denies the allegation that he [REDACTED] a resident [REDACTED], stating: he has a [REDACTED] he has no desire to [REDACTED]; and that the alleged victim falsely accused him of [REDACTED] her as an act of revenge for his failure to [REDACTED]. (T. Appellant, 00:27:49 – 00:29:15 and 00:31:54 – 00:32:08.)

The Appellant's denial is self-serving and does not outweigh the numerous documented instances of the [REDACTED] actions he directs towards [REDACTED] at the Respondent's facility. The Respondent repeatedly educated the Appellant about how to behave appropriately. Unfortunately, the Appellant's negative behavior escalated. Therefore, his discharge from the Respondent is necessary. The discharge plan is appropriate given the discharge location is near the Respondent, allowing family the same convenience for visitation, and Dr. Sethi's determination that the Appellant is medically suitable to reside at the discharge location.

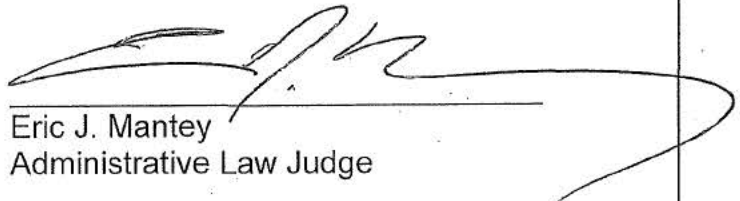
DECISION

The Respondent established that its determination to discharge the Appellant 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. Bellhaven Center for Rehabilitation and Nursing Care 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

June 28, 2024



Eric J. Mantey
Administrative Law Judge

To: Bellhaven Center for Rehabilitation and Nursing Care
110 Beaver Dam Road
Brookhaven, New York 11718
Attn: Glenn Grodner
ggrodner@bellhavencenter.com

[REDACTED]
c/o Bellhaven Center for Rehabilitation and Nursing Care
110 Beaver Dam Road
Brookhaven, New York 11718
[REDACTED]