

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



Department of Health

KATHY HOCHUL
Governor

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

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

September 10, 2024

CERTIFIED MAIL/RETURN RECEIPT

Rebecca Butler, NHA
Seneca Nursing and Rehabilitation Center
200 Douglas Drive
Waterloo, New York 13165

██████████ ██████████
c/o Geneva General Hospital
196 North Street
Geneva, New York 14456

Rebecca Shoots
Geneva General Hospital
196 North Street
Geneva, New York 14456

Carmen Jule, Esq.
Sheppard Mullin
30 Rockefeller Plaza
New York, New York 10112

Langston McFadden, Esq.
Law Offices of Pullano & Farrow PLLC
401 Main Street
East Rochester, New York 14445

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 blue ink that reads "Natalie J. Bordeaux".

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: *lmg*
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

**Seneca Nursing and
Rehabilitation Center,**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

#DA24-6420

Hearing before: Eric J. Mantey
Administrative Law Judge
August 23, 2024
By WebEx Videoconference

Parties: Seneca Nursing and Rehabilitation Center
200 Douglas Drive
Waterloo, New York 13165

By: Langston McFadden, Esq.
Law Offices of Pullano & Farrow PLLC
401 Main Street
East Rochester, New York 14445

██████████ ██████████
Geneva General Hospital
196 North Street
Geneva, New York 14456

By: Carmen Jule, Esq.
Sheppard Mullin
30 Rockefeller Plaza
New York, New York 10112

JURISDICTION

On [REDACTED] 2024, Seneca Nursing and Rehabilitation Center (Respondent), a residential health care facility subject to Article 28 of the Public Health Law, transferred [REDACTED] [REDACTED] (Appellant) from care and treatment in its facility to Geneva General Hospital (Geneva), Waterloo, New York and would not allow him to return after his acute care needs were resolved. The Appellant appealed the determination to the New York State Department of Health (Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) Section 415.3(i).

The hearing was held in accordance with 10 NYCRR § 415.3(i)(2), 42 C.F.R. § 483.15, and the New York State Administrative Procedure Act § 301(1) via Webex videoconference. Evidence was received and witnesses were examined. A digital recording of the hearing was made. (Length – 04:35:22.)

HEARING RECORD

ALJ Exhibits:

- I. Notice of Hearing

Respondent's Exhibits:

4. [REDACTED]. Witness Statement
5. [REDACTED]. Witness Statement
6. [REDACTED]. Witness Statement
7. [REDACTED]. Witness Statement
8. [REDACTED]. Witness Statement
9. [REDACTED], R.N. Assessment of Appellant
10. Face Sheet
11. Care Plan
12. Nurse Notes
13. Progress Notes
14. BIMS Assessment
15. N.P. L.C. Notes
16. Geneva General Hospital Records
17. UR Medicine Department of Telepsychiatry Notes
18. Physician Order Report

21. Geneva General Hospital Referral Packet

22. Vincent Yavorek, M.D. Assessments/Notes
23. Waterloo Police Report

Appellant's Exhibits:

- B. Geneva General Hospital Care Management Progress Notes

Respondent's Witnesses:

1. Brandy Crocker, Licensed Practical Nurse (L.P.N.), Nurse Manager
2. Colby Wells, Maintenance Director
3. Mallory Pineo, Director of Social Work
4. Scott Lang, L.P.N. / Supervisor
5. Rebecca Butler, Administrator
6. Nicole Halsey, Registered Nurse / Corporate Leadership Nurse

Appellant's Witnesses:

1. Dr. Margaret Ameyaw
2. Rebecca Shoots, Care Manager

ISSUES

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

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Respondent on [REDACTED], 2024. He is diagnosed with [REDACTED], other [REDACTED]. (Respondent Ex. [R. Ex.] 10.)

2. A Brief Interview for Mental Status (BIMS) assessment dated [REDACTED], 2024, reveals that the Appellant has a BIMS summary score of [REDACTED] (R. Ex. 14.)

3. On [REDACTED], 2024, the Respondent discharged the Appellant to Geneva and verbally notified his [REDACTED] about the discharge on the same day. Geneva is listed as the discharge location on the discharge notice. The discharge notice states "medical necessity" is the basis for the discharge. The discharge notice was delivered to the

Appellant while at Geneva on [REDACTED] 2024. (ALJ Ex. 1. and R. Ex. 10.; T. Pineo, 01:02:37.)

4. The Appellant's physician, Vincent Yavorek, M.D., documented in the Appellant's clinical record that the Appellant was transferred to Geneva on [REDACTED] 2024, for "evaluation and stabilization". (R. Ex. 22.)

5. Geneva sought to discharge the Appellant back to the Respondent; however, Geneva's progress notes dated [REDACTED], and [REDACTED] 2024, document the Respondent's refusal to readmit him. (Appellant Exhibit [A. Ex.] B.) On [REDACTED], 2024, Dr. Yavorek documented the Respondent's unwillingness to readmit the Appellant. (R. Ex. 22.)

6. The Appellant currently does not need acute care services provided by a hospital. Testimony [T.] Ameyaw, 03:25:47 – 03:26:03.)

7. The Appellant remains at Geneva 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(2); 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

...

(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 Respondent has the burden of proving that the discharge is correct and that the discharge plan is appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

The Respondent affirms that the Appellant is a danger to others and is not suitable to stay at the Respondent. He [REDACTED] becomes [REDACTED] from the Respondent; [REDACTED];

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. (R. Ex. 4, 5, 6, 8, 11, 12, 13, 15,

17.) Testimony from Respondent witnesses substantiate these documented behaviors.

The Appellant's behaviors date back to [REDACTED] 2024, which is just 6 days after his admission to the Respondent. (R. Ex. 12.) These types of behaviors continued at the Respondent all the way to the day he was sent to Geneva.

The Respondent documented its attempts to stabilize the Appellant's [REDACTED] conditions with adjustments to his [REDACTED] medications throughout the duration of his stay at the facility. (R. Ex. 18 and 22.) The Respondent was not successful which ultimately culminated with him [REDACTED] L.P.N. Lang who was removing him from the room of other residents. (T. Pineo, 00:45:17; T. Lang, 01:10:23 – 01:10:47.) The Respondent called 911 and the Appellant was transported to Geneva. (T. Lang, 01:11:44 and R. Ex. 23.) The Respondent documented this on the discharge notice as a discharge due to medical necessity. (ALJ Ex. I.) Dr. Yavorek documented the discharge as a need for the Appellant to receive evaluation and treatment. Medical necessity, and evaluation and treatment are not enumerated as bases for discharge in 10 NYCRR § 415.3(i)(1)(i)(a).

Geneva informed the Respondent on [REDACTED], and [REDACTED] 2024, that the Appellant was stable and ready to be returned to the nursing home. (A. Ex. B.) Ms. Shoots testified that she contacted the Respondent on [REDACTED], 2024, then again on [REDACTED] and again closer into [REDACTED] and she was told each of these times that the Respondent would not readmit the Appellant, which is why she did not initially send any transfer paperwork to the Respondent at the time. However, in [REDACTED] she did send the Patient Review Instrument to the Respondent that indicated the Appellant requires skilled nursing services. (T. Shoots, 03:51:05 – 03:52:14, 04:06:17 – 04:08:01.) Geneva also gave the Respondent an application, history and physical information, the most recent

progress note, and a medication list. (T. Shoots, 04:10:06.) The Appellant is ready to be discharged to the Respondent. (T. Shoots, 04:09:28.)

A meeting was held on [REDACTED], 2024, with members of the Respondent and Geneva during which the Appellant was present. (T. Shoots, 03:55:25.) Ms. Pineo and Ms. Halsey were also in attendance. (T. Shoots, 03:55:30 – 03:56:22.) The Respondent did not ask the Appellant how he was doing, nor did they inquire into whether the Appellant displayed behavioral issues at Geneva. The Respondent gave him the discharge notice during the meeting to which the Appellant responded by crying; he did not become angry. He did not have any outburst. (T. Shoots, 03:56:35 – 03:58:31.) Yet, the Respondent will not readmit him; the Respondent freely admits refusing to accept him back, citing his psychological needs which they assert cannot be managed at their facility. (T. Pineo, 00:46:08 – 00:47:16; R. Ex. 22.)

It is acceptable to send a nursing home resident to an acute care facility if the need arises; however, a hospital is not an appropriate final discharge location. The Respondent's administrator admits knowing that a hospital is not an appropriate final discharge location. (T. Butler, 02:04:29.) Refusing to allow the Appellant's return to the nursing home is not appropriate either.

DAL-NH 19-07 states, "[a] facility's determination not to permit a resident to return must not be based on the resident's condition when originally sent to the Hospital." Here, the Respondent's refusal to re-admit the Appellant is based upon the very same diagnosis, and the behaviors associated with it, for which it sent the Appellant to Geneva.

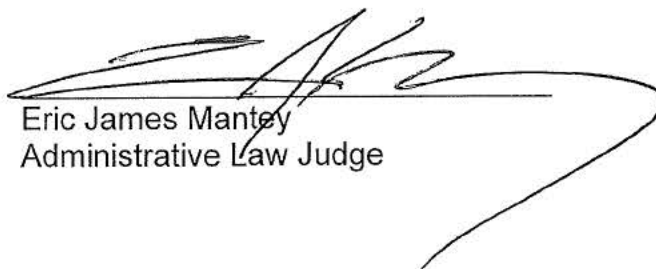
The Respondent was not in compliance with pertinent regulations and Department guidance when it discharged the Appellant to Geneva with the plan for Geneva to be a final discharge location.

DECISION

The Respondent failed to establish that its determination to discharge the Appellant is correct and that its discharge plan is appropriate.

1. The Respondent 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
September 10, 2024



Eric James Mantey
Administrative Law Judge

To: Seneca Nursing and Rehabilitation Center
200 Douglas Drive
Waterloo, New York 13165
Attn: Rebecca Butler, N.H.A.

██████████ ██████████
c/o Geneva General Hospital
196 North Street
Geneva, New York 14456

Geneva General Hospital
196 North Street
Geneva, New York 14456
Attn: Yolande Koenigstein, R.N.

Carmen Jule, Esq.
Sheppard Mullin
30 Rockefeller Plaza
New York, New York 10112

Langston McFadden, Esq.
Law Offices of Pullano & Farrow PLLC
401 Main Street
East Rochester, New York 14445