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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

August 29, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Terence Cardinal Cooke
1249 5th Avenue
New York, New York 10029

Stevenson Andre, Director Social Services
Terence Cardinal Cooke
1249 5th Avenue
New York, New York 10029

Daniel Ross, Esq.
Mobilization for Justice, Inc.
100 William Street, 6th Floor
New York, New York 10038

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

**Terence Cardinal Cooke
Health Care Center,**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION

DA24-6427

Hearing Before: Jeanne T. Arnold
Administrative Law Judge

Held via: WebEx Videoconference

Hearing Date: August 27, 2024

Parties: Terence Cardinal Cooke Health Care Center
1249 Fifth Avenue
New York, New York 10029
By: Stevenson Andre, Director of Social Services

██████████

Terence Cardinal Cooke Health Care Center

By: Daniel A. Ross, Esq.
Mobilization for Justice
100 William Street, 6th Floor
New York, New York 10038

JURISDICTION

Terence Cardinal Cooke Health Care Center (Facility), a residential health care facility
subject to Article 28 of the New York Public Health Law (PHL), determined to discharge resident

██████████ (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR 415.3(i).

HEARING RECORD

Facility witnesses: Michelle Redon, Social Worker
Marcyenda Cupid, Director of Clinical Operations
Fabiola Plessy, Nurse Practitioner
Gillian Bailey, Director of Nursing
Shama Zakai, Medical Director
Stevenson Andre, Director of Social Services

Facility exhibits: A-F

Appellant witnesses: ██████████ Appellant

Appellant exhibits: 1-2

ALJ exhibit: I

A digital recording of the hearing was made (3h:28m in duration). Testimony is indicated by “T”.

FINDINGS OF FACT

1. The Appellant is a ██████-year-old male who was last admitted to the Facility from ██████████ Hospital on ██████████, 2023, but has been a resident of the Facility since ██████████ 2016. The Appellant has primary medical diagnoses of ██████████ after suffering from a ██████████ and ██████████. (Exhibit 1; T ██████████)

2. The Appellant was last re-evaluated by Facility rehabilitation staff on ██████████ 2024 to assess whether he required physical and/or occupational therapy services. The Facility determined that the Appellant did not require such services as he exhibits independence in all areas. (Exhibit B.)

3. The Appellant does not currently receive any medical or therapeutic services at the Facility. (Exhibit B; T Andre.)

4. The Appellant independently performs activities of daily living (ADLs). He uses his mechanical wheelchair effectively and can successfully change his [REDACTED] using a sterile technique. (Exhibits B, F; T Radon, Cupid, Plessy, Zakai, Andre.)

5. By notice dated [REDACTED] 2024, the Facility determined to discharge the Appellant on [REDACTED], 2024, because his health has improved sufficiently so that he no longer requires the services provided by the Facility. The notice advised the Appellant that he would be discharged to the [REDACTED] [REDACTED] located at [REDACTED] [REDACTED] [REDACTED]. (Exhibit I.)

6. The Appellant's clinical record contains documentation from his interdisciplinary team, including his nurse practitioner, that the Appellant's condition has improved such that he no longer requires the services of a nursing home, and that discharge to a shelter is appropriate. (Exhibit E; T Plessy, Andre.)

7. On [REDACTED] 2024, the Appellant requested this hearing to contest the Facility's discharge determination.

8. The Appellant remains at the Facility pending the outcome of the hearing.

ISSUES

Has the Facility established that the Appellant's discharge is authorized and that the discharge plan is appropriate?

APPLICABLE LAW

A residential health care facility, or nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. PHL § 2801(2); 10 NYCRR 415.2(k).

Public Health Law § 2803-z and Department regulations at 10 NYCRR 415.3(i) describe the transfer and discharge rights of residential health care facility residents.

The regulations at 10 NYCRR 415.3(i) state, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(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.

When the Facility transfers or discharges a resident for this reason, the Facility shall ensure that the resident's clinical record contains complete documentation made by the resident's physician and, as appropriate, the resident's interdisciplinary care team. 10 NYCRR 415.3(i)(1)(ii)(a). The Facility must provide sufficient preparation and orientation to residents to ensure safe and orderly discharge from the Facility in the form of a discharge plan which address the resident's medical needs and how the needs will be met after discharge. 10 NYCRR 415.3(i)(1)(vi).

PHL § 2803-z(1)(b) states that prior to a facility initiating a discharge of a resident, the Facility shall use its best efforts, including compliance with applicable federal and state regulations to secure appropriate placement or a residential arrangement for the resident, other than temporary housing assistance (or shelter placement).

The Facility 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); State Administrative Procedure Act § 306(1).

DISCUSSION

The Facility has established that the Appellant is not in need of nursing home care, pursuant to the opinion of its interdisciplinary team, including the Appellant's treating nurse practitioner. (Exhibits B, E.) The Appellant is alert, cognitively intact, self-administers medication when he wants to take it, has demonstrated successful [REDACTED] (Exhibit F), successfully navigates using his mechanical wheelchair, and is independent with ADLs. (Exhibits A, B.) The necessity of the discharge is documented in the Appellant's medical record by the resident's treating nurse practitioner as required by 10 NYCRR 415.3(i)(1)(ii)(a) and (iii)(b). (Exhibit E.) The Appellant is currently not seen in the Facility by a physician because he does not have medical needs that require same, has demonstrated a high level of independence, and he has refused to see the Facility's physician and, therefore, his medical needs have been monitored by his treating nurse practitioner. (T Cupid, Zakai.)

The Appellant's Nurse Practitioner Plessy testified that she has been assigned to work with the Appellant. She testified that the Appellant successfully navigates independently with his mechanical wheelchair, has demonstrated independence with all ADLs, including independence with his [REDACTED] needs, has no wounds, and there are no barriers to discharging the Appellant to the [REDACTED] Shelter.

The Appellant argued that he still requires the Facility's services because he requires assistance with his [REDACTED]. The Appellant admitted however that he learned to [REDACTED] because he was required to do so to leave the Facility on pass without escort and has been able to do so since [REDACTED] 2024. (Exhibits D, F.) After the Facility issued the current Discharge Notice, the Appellant met with Nurse Practitioner Plessy on [REDACTED], 2024 and informed her that he wished for the Facility staff to start assisting him with his [REDACTED] again. (Exhibit D.) The Appellant was

informed that he could and should continue to independently [REDACTED]; but the Facility staff also acknowledged the Appellant's concerns and has referred him to a [REDACTED] clinic, located near the proposed discharge location to assist the Appellant with his [REDACTED]. (Exhibit D; T Plessy.)

The Appellant also contends that he continues to require assistance from the Facility staff with transfers between his wheelchair and bed, with bed mobility, bathing and dressing. Director of Nursing Bailey acknowledged that the Facility's ADL chart details that, over the last two months, the Appellant has had some set-up and supervision with dressing and supervision with transfers into bed on the night shift; however, she emphasized that nursing home settings require supervision, and that the Appellant has demonstrated independence with the tasks.

The Appellant testified that he requires a hospital bed. He indicated that his current hospital bed enables him to transfer independently to his wheelchair using a board and that the bed rails allow him to independently maneuver while in bed. Similarly, the Appellant indicated that he continues to need assistance with showering. The Appellant described that he requires the Facility's shower bench at level with his wheelchair and railings and tubing to shower independently.

While the Appellant testified that he has friends in shelters, and they informed him that neither hospital beds nor appropriate shower equipment are provided, the [REDACTED] [REDACTED] Referral form indicates that reasonable accommodations can be made for residents which may include durable medical equipment. (Exhibit 1.) The Facility completed an [REDACTED] referral on behalf of the Appellant and the Appellant was accepted at [REDACTED] shelter with the shelter's staff understanding the Appellant's physical challenges. (Exhibit 1; T Andre, Redon.) Additionally, before the Appellant

resided at the Facility, he resided at a shelter. (T Radon, ██████████) While the Appellant contended that he is bedridden most days, the Facility witnesses testified to the contrary, that the Appellant is most often seen out of his room and unit, has a “fan club” in the Facility as he serves as the other residents’ hair stylist and advocate, and leaves the Facility independently, either for appointments with his probation officer or outings with family and friends, arranging all details including his own transportation. (T Andre, Bailey, Plessy, Redon, Zakai.) The Facility’s multidisciplinary team concurs that the Appellant is safe for discharge and any assistance with his ██████████ can be followed up outpatient at the ██████████ clinic and/or with the Appellant’s primary care physician. (T Andre, Bailey, Plessy, Redon, Zakai.)

With respect to the proposed discharge plan, the Facility complied with PHL § 2803-z(1)(b) and applicable federal and state regulations in making efforts to secure an appropriate placement for the Appellant before resorting to placement in temporary housing. (T Redon.) According to Social Worker Redon, towards the end of 2023, referrals were made to Assisted Living Facilities (ALFs) on behalf of the Appellant, including referrals to ██████████ and ██████████. However, either because the Appellant requested to reside only in a single room or due to his history, he was not accepted. (T Redon, ██████████) The Appellant would prefer to find his own apartment and has been working consistently with his representative at ██████████ since 2023 to find appropriate housing. (T Andre.) Director of Social Services Andre testified that he has been working with the Appellant for five years, has witnessed the Appellant work with ██████████ and even complete his own housing applications. The ██████████ Shelter will work with the Appellant to locate supportive housing or independent housing (Exhibit C) and the Appellant can and should continue to work with ██████████

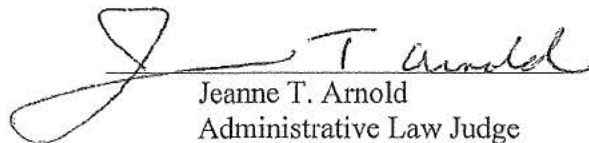
The evidence reflects that the Facility complied with 10 NYCRR 415.3(i)(1)(vii), which requires giving the Appellant an opportunity to participate in deciding where he will reside after discharge. (Exhibits A, B; T Redon, Andre.) The Facility's interdisciplinary team discussed the Appellant's placement with him, and the Appellant provided no alternative viable options. (Exhibits A, B; T Redon, Andre, [REDACTED])

The Facility will provide the Appellant's medications and supplies for his [REDACTED] referrals for the [REDACTED] clinic, as requested and needed, and follow up appointments for on-going medical care in the community. (Exhibit B.) The Facility's proposed discharge plan addresses the Appellant's needs and how those needs will be met after discharge. 10 NYCRR 415.3(i)(1)(vi).

DECISION

The Facility established that its determination dated [REDACTED], 2024 to discharge the Appellant is authorized and that its discharge plan is appropriate.

Dated: August 29, 2024
Rochester, New York


Jeanne T. Arnold
Administrative Law Judge