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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

September 25, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o The Grand at South Point
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Island Park, NY 11803

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Seemeen Pathan, Ombudsman
Sandra Hacker, Ombudsman
Family & Children's Association
377 Oak Street, 5th Floor
Garden City, NY 11530

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: nm
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

COPY

In the Matter of an Appeal, pursuant to
10 NYCRR 415.3, by

██████████ ██████████

DECISION

Appellant,

from a determination by

THE GRAND AT SOUTH POINT,

Respondent,

to discharge her from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Date: September 19, 2024

Parties: ██████████ ██████████
c/o The Grand at South Point
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JURISDICTION

By notice dated [REDACTED], 2024, The Grand at South Point (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] [REDACTED] (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) 415.3(i).

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

HEARING RECORD

- ALJ Exhibits: I – Letter with Notice of Hearing and Transfer/Discharge Notice [REDACTED] 24)
- Facility Exhibits:
 - 1 – Physicians Progress Note
 - 2 – Physical Therapy documents
 - 3 – Social Work Progress Notes
 - 4 – Interdisciplinary Team Discharge and Care Plan Summary Guide
- Appellant Exhibits:
 - A – Diagnosis Report
 - B – Order Listing Report
 - C – Documentation Survey Report V2
 - D – [REDACTED] 2024 Progress Notes
 - E – Photographs
- Facility Witnesses:
 - Elliot Schwartz, Medical Director
 - Theresa Iacopelli, Director of Rehabilitation
 - Sabrina Regis, Registered Nurse, Unit Manager
 - Samantha DiClemente, Director of Social Work
 - Frank Arduini, Nursing Home Administrator
- Appellant Witnesses: [REDACTED] [REDACTED] Appellant

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female who was initially admitted to the Facility on [REDACTED] 2021. (Exhibit [Ex.] 4.)
2. The Appellant has a lengthy medical history with multiple diagnoses and chronic medical issues. (Ex. A; Testimony [T.] Schwartz.)
3. The Appellant is currently taking numerous prescribed medications, including an [REDACTED] and a [REDACTED] (Ex. B; T. Schwartz, [REDACTED])
4. The Appellant has a [REDACTED]. (T. Schwartz, [REDACTED])
5. While at the Facility, the Appellant has received physical therapy (PT). She was discharged from PT on [REDACTED] 2024, after meeting her short-term and long-term goals. (Ex. 2; T. Iacopelli.)
6. The Appellant independently schedules and manages her medical appointments outside of the Facility, independently arranges for transportation to and from those appointments, and independently leaves the Facility to attend her appointments. (T. Iacopelli, Regis.)
7. The Appellant has demonstrated independence with her activities of daily living (ADLs), except that her medication management is handled by the Facility as per Facility policy. (Ex. B; T. Schwartz, Iacopelli, Regis, [REDACTED])
8. On [REDACTED] 2024, the Facility issued a Transfer/Discharge Notice to the Appellant which proposed discharge to [REDACTED] for placement in a homeless shelter. (ALJ Ex. I.)
9. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant's health has improved sufficiently such that the Appellant no longer requires the services of the Facility. (ALJ Ex. I.)

10. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.

11. Subsequently, on [REDACTED] 2024, the Appellant sustained a fall while walking in the hallway at the Facility. As per facility protocol, the Appellant was readmitted into PT for two weeks, until [REDACTED], 2024. Therapy was ongoing at the time of the hearing. (Ex. 2; T. Iacopelli.)

12. The Appellant's fall on [REDACTED], 2024, has not caused a change in the Appellant's functional ability. (Ex. 2; T. Iacopelli.)

13. The Appellant acknowledges that she does not need nursing home level of care. The Appellant does not contest that discharge is necessary. The sole issue at hearing is the appropriateness of the discharge location. (T. [REDACTED] Closing Statement by Park.)

14. The Appellant has remained at the Facility during the pendency of the appeal.

ISSUES

Has the Facility established that its discharge plan is appropriate?

APPLICABLE LAW

A residential health care facility, also referred to in the Department's 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's Rules and Regulations. (10 NYCRR 415.3[i][1].)

Pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2), a resident may be discharged because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.

A Facility must ensure complete documentation in the resident's clinical record when a resident is discharged. (10 NYCRR 415.3[i][1][ii].)

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), the Facility bears the burden to prove a discharge is necessary and appropriate.

DISCUSSION

The Facility has determined to discharge the Appellant to the [REDACTED] [REDACTED] for placement in a homeless shelter. The Facility's medical director, Dr. Elliot Schwartz, testified that a shelter placement is "not inappropriate" for the Appellant. Sabrina Regis, RN, Unit Manager, testified that a shelter is a safe discharge plan for the Appellant. She testified that the Appellant is independent with her ADLs and that the Appellant is capable of managing her own medications. Ms. Regis testified at length as to the Appellant's ability to be independent, regardless of notations on the Appellant's medical record that supervision or touch assistance was provided during certain ADLs throughout the month of [REDACTED] 2024. Ms. Regis further testified that codes on the Appellant's medical record reflecting that supervision or touch assistance were provided to the Appellant are the minimum levels of assistance appropriately

noted because the Facility, in providing skilled nursing services, is required to supervise all residents.

Theresa Iacopelli, Director of Rehabilitation, testified that the Appellant has met all of her short-term and long-term PT goals and can be safely discharged to the community and, specifically, to a shelter. Ms. Iacopelli further testified that the Appellant is currently in PT for a period of two weeks after falling in the hallway on [REDACTED], 2024, and that the Appellant's level of functioning has not changed as a result of the fall.

Samantha DiClemente, Director of Social Work, testified that she was unsuccessful in locating a lower level of care placement other than a shelter for the Appellant. Specifically, Ms. DiClemente testified that the Appellant has no home in the community to which she can return, no family with whom she can stay, and that no assisted living facility has accepted her due to her age and/or lack of income. Ms. DiClemente testified that shelter placement is a last resort and that the Department of Social Services informed her, during a telephone conversation, that it will evaluate the Appellant's needs and place her accordingly. Ms. DiClemente elaborated that the appropriate placement could possibly be a room somewhere rather than an overnight shelter if the Department of Social Services determines a room is necessary to meet the Appellant's needs.

The Appellant testified that while she does not need the services provided by a nursing home, a shelter placement is not appropriate for her. The Appellant raised concerns with a shelter placement given her need to rest and [REDACTED] throughout the day due to her medical conditions. The Appellant also expressed concern with regard to her medication regimen, including her ability to manage her medication administration given the large volume of medications she is prescribed and the various administration times throughout the day for different medications; her ability to safe-keep the medications – especially controlled substances – in a shelter setting; her unmonitored access to prescribed controlled substances given her history of

██████████ and potential for ██████████ the need for medical oversight given the potentially dangerous combination of having a prescribed ██████████ and a prescribed ██████████ and the ability to carry with her the medications she needs throughout the day if she is placed in an overnight-only shelter.

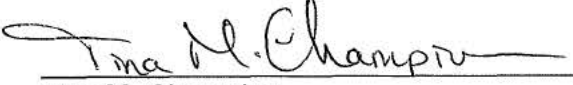
The Facility, through its documentary evidence and testimony from medical professionals, has met its burden to show that the Appellant is functionally appropriate to be discharged to a shelter. While the Appellant has understandable concerns regarding the management and safe keeping of her medications, the Facility has also shown that these concerns are not an impediment to the Appellant's safe discharge to a shelter. Ms. Regis testified that the Appellant is able to manage her own medications. This testimony is supported by the Appellant's own detailed testimony as to the medications she takes and her testimony as to the medical conditions that the medications are prescribed to treat. Further, Ms. DiClemente credibly testified that the Department of Social Services will undertake an evaluation for shelter placement upon intake, which evaluation can result in the Appellant being placed in a room rather than an overnight-only shelter if appropriate.

DECISION

The Grand at South Point has established that its discharge plan is appropriate.

1. The Appellant may be discharged after ██████████, 2024, in accordance with the ██████████ 2024, Transfer/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: Albany, New York
September 25, 2024


Tina M. Champion
Administrative Law Judge

TO:

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