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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

CENTRAL ISLAND HEALTHCARE,

Respondent,

to discharge him from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Date: September 17, 2024

Parties: ██████████ ██████████
c/o Central Island Healthcare
825 Old Country Road
Plainview, NY 11803

By: ██████████ ██████████ ██████████

Central Island Healthcare
825 Old Country Road
Plainview, NY 11803

By: Stephanie Holmes, Director of Social Work

JURISDICTION

By notice dated [REDACTED] 2024, Central Island Healthcare (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination 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 (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

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

HEARING RECORD

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

Facility Exhibits: 1 – Resident Face Sheet
2 – Moshe H. Shirazi, M.D., P.L.L.C. letter ([REDACTED] 24)
3 – Social Work Progress Notes
4 – [REDACTED] Progress Notes
5 – [REDACTED] Progress Notes
6 – PT Discharge Summary
7 – OT Discharge Summary
8 – Invoice [REDACTED] 24)

Appellant Exhibits: None

Facility Witnesses: Stephanie Holmes, Director of Social Work
Ester Paez, Medicaid Coordinator
Christine Chieffo, Director of Rehabilitation
Jeanette Blauvelt, RN, Unit Manager

Appellant Witnesses: [REDACTED] Appellant
[REDACTED] Appellant's [REDACTED]
[REDACTED] Appellant's [REDACTED]

Ombudsman: Mara Schwartz

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2024. (Exhibit [Ex.] 1; Testimony [T.] Holmes.)
2. The Appellant was admitted to the Facility with the intention of "long-term placement," which was later changed to discharge to the community. (T. Holmes.)
3. Prior to admission to the Facility, the Appellant resided at another skilled nursing facility [REDACTED] and, from there, was admitted to a hospital before being admitted to the Facility. (T. Homes; A. [REDACTED])
4. While at the Facility, the Appellant received physical therapy (PT) and occupational therapy (OT). He was discharged from both therapies on [REDACTED] 2024. (Exs. 6 and 7; T. Chieffo.)
5. The Appellant was previously, but is no longer, on oxygen. He utilizes a [REDACTED] [REDACTED] at [REDACTED] and the Facility has ordered one for him to take with him upon discharge. (Ex. 4; T. Holmes, Blauvelt.)
6. The Appellant has some difficulty with his [REDACTED] but can walk and navigate a flight of stairs. (T. Chieffo, A. [REDACTED])
7. The Appellant leaves the Facility several times a week with family members pursuant to an out-on-pass arrangement. (T. Holmes.)
8. The Appellant has no clinical nursing needs. (Exs. 2, 6 and 7; T. Holmes, Chieffo, Blauvelt.)
9. The Appellant's attending physician at the Facility, Moshe H. Shirazi, M.D., P.L.L.C. has opined, through a letter dated [REDACTED] 2024, that the Appellant's medical conditions are stable and being treated with medications, and that the Appellant is stable to be discharged to

any lower level of care setting. He also opined that the Appellant is walking and independent with his activities of daily living (ADLs). (Ex. 2.)

10. The Appellant requires supervision in caring for himself. (Ex. 5; T. [REDACTED] J. [REDACTED])

11. The Appellant was initially receiving [REDACTED] Medicaid benefits. The benefits have ended, and he is not eligible for [REDACTED] Medicaid because he is not yet [REDACTED] years old, and he does not have an [REDACTED]. (T. Holmes, Chieffo.)

12. As of [REDACTED] 2024, the Appellant owed the Facility \$ [REDACTED] which amount covers his stay at the Facility through [REDACTED], 2024. (Ex. 8; T. Paez.)

13. The Appellant was made aware of the amount owed to the Facility by the Facility's Medicaid Coordinator. (T. Paez.)

14. On [REDACTED] 2024, the Facility issued a Transfer/Discharge Notice to the Appellant which proposed discharge to [REDACTED]. The identified address is a hotel. (ALJ Ex. I.)

15. The Discharge/Transfer 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 and because the Appellant has a bill for his stay at the Facility but has "not attempted to pay." (ALJ Ex. I.)

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

17. The Appellant has remained at the Facility 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 Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2), which states:

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.

It also alleges that the Appellant's discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(b), which states:

Transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third party insurance) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid. Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the funds.

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

DISCUSSION

The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2024. The testimony and documentation offered by the Facility reflect that the Appellant is medically stable, physically independent with his ADLs, and does not need clinical/skilled nursing care. The testimony and documentation offered by the Facility also reflect that the Appellant has failed, after reasonable and appropriate notice, to pay for his stay at the Facility after his [REDACTED] Medicaid benefits ended. The Facility has met its burden to show that discharge is necessary pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2) and 10 NYCRR 415.3(i)(1)(i)(b).

The Facility has proposed discharge to a hotel in the community, located in [REDACTED]. [REDACTED] The evidence supports that the Appellant would be able to physically manage in a hotel setting. The Appellant scored [REDACTED] 15 on a brief inventory of mental status (BIMS) dated [REDACTED] 2024. (Ex. 3.) However, a summary of a mental status exam in the Facility’s [REDACTED] progress notes dated [REDACTED] 2024, reflects that the Appellant “[h]as [REDACTED] and [REDACTED] [REDACTED]” Immediately following that entry is another entry noting that the Appellant “[h]as [REDACTED] [REDACTED]” The progress note is marked as “Type: Correction”. The document does not indicate what information was corrected, if any, or what information is incorrect. (Ex. 5.) The Facility offered no explanation of the

contradictory entries in its progress note, nor did it offer the testimony of a physician or other individual from the medical discipline to address the Appellant's mental status.

The findings reflected in the first [REDACTED] exam note from [REDACTED] 2024, are corroborated by the steadfast testimony of the Appellant's [REDACTED] and [REDACTED] who expressed concern about the Appellant's ability to function in the community without supervision.

[REDACTED] testified that the Appellant has [REDACTED] [REDACTED] has been [REDACTED] is [REDACTED] [REDACTED] and has previously had an issue with taking appropriate medication.

[REDACTED] also testified that the Appellant is not capable of taking care of himself, that he needs assistance, that he cannot take his medications appropriately, and that he cannot take care of himself. The Appellant also acknowledged [REDACTED] during his testimony. Moreover, the Appellant, while pleasant and cooperative, testified and responded to questions posed by the ALJ with answers that supported the testimony of his family members and raise concern over the Appellant's ability to function in the community absent supervision.


While the Appellant does not require the services of a skilled nursing facility, the Appellant requires a placement where he has some level of supervision to support him cognitively. The Facility has failed to show that its plan to discharge the Appellant to a hotel in the community, absent additional services, is appropriate.

DECISION

Central Island Healthcare has established that its determination to discharge the Appellant was correct, but it has not established that its discharge plan is appropriate.

1. The Appellant may not be discharged in accordance with the Transfer/Discharge Notice 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: Albany, New York
September 20, 2024


Tina M. Champion
Administrative Law Judge

TO: [REDACTED]
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[REDACTED]