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Department of Health

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Governor

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

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

October 8, 2024

CERTIFIED MAIL/RETURN RECEIPT

■■■■ ■■■■
c/o Brunswick Hospital Center
81 Loudon Avenue
Amityville, New York 11701

Michael Bass, Esq.
Abrams Fensterman, LLP
54 State Street, Suite 803
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Carly Sommers, Esq.
Mental Health Legal Service
Appellant Division of the Supreme Court
Second Judicial Department
Courthouse Corporate Center
320 Carleton Avenue, Suite 3200
Central Islip, New York 11722

Claudia DaCosta, DSW
Hempstead Park Nursing Home
800 Front Street
Hempstead, New York 11550

Nicole Wittman, Esq.
Brunswick Hospital Center
81 Loudon Avenue
Amityville, New York 11701

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: cmg
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

HEMPSTEAD PARK NURSING HOME,

Respondent,

to discharge her from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Date: October 2, 2024

Parties: ██████████ ██████████
c/o Brunswick Hospital Center
81 Loudon Avenue
Amityville, NY 11701

By: Carly Sommers, Esq.
Mental Health Legal Service
Appellant Division of the Supreme Court
Second Judicial Department
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320 Carleton Avenue, Suite 3200
Central Islip, NY 11722

Hempstead Park Nursing Home
800 Front Street
Hempstead, NY 11550

By: Michael Bass, Esq.
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54 State Street, Suite 803
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JURISDICTION

By notice dated [REDACTED] 2024, Hempstead Park Nursing Home (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [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 recording of the proceeding was made.

HEARING RECORD

Facility Witnesses: Shiphali Rohatgi, MD
 Syed Abidi, MD
 Claudia Dacosta, Director of Social Work

Facility Exhibits: 1 – Discharge Notice
 2 – Dacosta Affirmation

Appellant Witnesses: Marie Pierre-Louis, MD
 Alexandra Miller, Assistant Director of Social Work

Appellant Exhibits: A – Appeal Letter
 B – [REDACTED] Docs
 C – [REDACTED] Notes
 D – [REDACTED] Updated Notes
 E – [REDACTED] Updated Notes

ALJ Exhibits: I – Adjudication Letter with Notice of Hearing

The Appellant was not present at the hearing and her appearance was waived by her attorney.

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female with a lengthy history of [REDACTED] issues and multiple related hospital admissions since the age of [REDACTED] (Facility Exhibit [Ex.] 1 & 2; Testimony [T.] Rohatgi.)
2. The Appellant was admitted to the Facility on [REDACTED] 2021, from [REDACTED] [REDACTED] with diagnoses of [REDACTED] (Facility Ex. 2.)
3. The Appellant has exhibited challenging behaviors, including medication refusals, [REDACTED] and [REDACTED] peers and staff while at the Facility and has been sent to the hospital for [REDACTED] eight times since her admission to the Facility. (Facility Ex. 2; T. Rohatgi.)
4. The last transfer to the hospital for [REDACTED] occurred on [REDACTED], 2024, following an incident at the Facility when the Appellant placed herself on the [REDACTED] of the Facility's Director of Social Work, Claudia Dacosta, and [REDACTED] at individuals who approached her. (Facility Ex. 2; T. Rohatgi.)
5. The Appellant was sent to [REDACTED] and, thereafter, on [REDACTED], 2024, transferred to Brunswick Hospital Center (Brunswick) where she has received [REDACTED] care. (Facility Ex. 2; Appellant Ex. A.)
6. The Facility created a Transfer/Discharge Notice within the Appellant's progress notes on [REDACTED] 2024, stating that the Appellant is being discharged on [REDACTED] 2024, to [REDACTED] on the basis that the "transfer/discharge is necessary for the residents welfare as the residents needs cannot be met in the Facility." (Facility Ex. 1.)
7. Brunswick has cleared the Appellant to return to the Facility, finding that she is not a danger to herself or others and that she is stable to reside in a group community setting. (Appellant Ex. A; T. Pierre-Louis.)
8. The Facility refuses to accept the Appellant back.
9. The Appellant has remained at Brunswick 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].) Excluding reasons of nonpayment and facility closure, a resident may be transferred only when:

- (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;

(10 NYCRR 415.3[i][1][i][a].)

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 was initially admitted to the Facility three years ago from a [REDACTED]. The Appellant has been in and out of the hospital multiple times for [REDACTED] over the last three years, with the last hospital admission occurring on [REDACTED] 2024.

Dr. Shiphali Rohatgi, the attending physician at the Facility, testified that the Appellant has a long history of [REDACTED] and has become [REDACTED] since [REDACTED] 2024. Dr. Rohatgi elaborated that the Appellant has become more [REDACTED] and more [REDACTED] and that she refuses care and calls 911 because she wants to go to the hospital. Dr. Rohatgi further testified that she last saw the Appellant on [REDACTED] 2024, approximately a month before the last hospital admission. Dr. Rohatgi testified that she has not spoken with anyone at [REDACTED] or Brunswick regarding the Appellant.

Dr. Syed Abidi, the visiting [REDACTED] at the Facility, testified that he has been treating the Appellant at the Facility since 2021 and that the Facility cannot meet the needs of the Appellant at this time. Dr. Abidi testified that he last met with the Appellant on [REDACTED] 2024, and that, at the hearing, he was just then learning about the Appellant's course at Brunswick.

Claudia Dacosta, the Director of Social Work at the Facility, testified that the Facility is unable to manage the [REDACTED] needs of the Appellant. Ms. Dacosta holds a bachelor's degree in social work. (Facility Ex. 2; T. Dacosta.) She testified that she has not seen or spoken to the Appellant since the Appellant's hospital admission on [REDACTED] 2024, and that she attempted to schedule a visit with the Appellant at Brunswick shortly before the hearing.

The Appellant presented the testimony of Dr. Marie Pierre-Louis, the [REDACTED] at Brunswick. Dr. Pierre-Louis testified that she meets with the Appellant every Monday through Friday. She testified that the Appellant is at her baseline level and that she is able to be discharged back to the Facility. Dr. Pierre-Louis opined that the Appellant is not a harm to herself or others. She also testified that the Appellant is not a candidate for admission to a long-term

state hospital. Dr. Pierre-Louis described that the Appellant is on a [REDACTED] as all units are locked at Brunswick, and that she has PA (psych aide) level of observation, which is observation provided to all residents by an aide in common areas such as the dining room.

Dr. Pierre-Louis testified that the Appellant has a "[REDACTED]" and a temper that needs managing but that her behavior and [REDACTED] are not a bar to discharging her back to the Facility. Dr. Pierre-Louis also acknowledged that the Appellant refuses to take her medications on occasion, with refusals noted to have occurred three days in the week prior to the hearing. (Appellant Ex. E.) Dr. Pierre-Louis explained that psychoeducation, once the Appellant has calmed down, has been effective in addressing the Appellant's medication refusals at Brunswick. Dr. Pierre-Louis testified that periodic refusal of medications by the Appellant is "not a problem" and that Brunswick has never had to get a court order to forcibly administer the Appellant's medications. Dr. Pierre-Louis testified that recent [REDACTED] tablet refusals by the Appellant were due to the color of the medication and, once the Facility switched from [REDACTED] pills to [REDACTED] pills, the Appellant complied with taking her medication. Dr. Pierre-Louis testified that the Appellant will receive a long-acting [REDACTED] which will stay in her system for one month, at the time of discharge back to the Facility.

The Appellant also presented the testimony of Alexandra Miller, LMSW, the Assistant Director of Social Work at Brunswick. Ms. Miller testified that the Appellant has shown significant improvement and that she is not a danger to herself or others. She testified that the Facility is refusing to take the Appellant back into its care.

The hospital has cleared the Appellant to return to the Facility. Dr. Pierre-Louis, as Brunswick's [REDACTED] who sees the Appellant every Monday through Friday, is in the best position to assess the Appellant's status and ability to return to a group community setting. Dr. Pierre-Louis acknowledges that the Appellant has certain challenging behaviors. This, however, does not mean that the Appellant is not ready to be discharged back to the Facility.

While the Facility maintains it is unable to meet the Appellant's needs, it offered very little information at the hearing as to specific steps it has taken to attempt to address her behavior. More importantly, the Appellant's attending physician and visiting [REDACTED] have not seen the Appellant since [REDACTED] 2024 or spoken to anyone at Brunswick regarding her care. They are not nearly as familiar with or able to adequately assess the Appellant's current care needs as compared to Brunswick's [REDACTED].

Moreover, if the Facility becomes unable to meet the needs of the Appellant, it must undertake to develop an appropriate discharge plan. The Facility has blatantly failed to do so by not engaging in an attempt to locate an appropriate discharge location for the Appellant since sending her to the hospital on [REDACTED] 2024, and issuing a discharge notice the following day naming [REDACTED] as the discharge location. It is well established that discharge to a hospital, an acute care facility, is not an appropriate discharge plan, nor does it address how Appellant's medical needs will be met after discharge from the hospital as required under applicable laws and regulations. The Facility previously accepted the Appellant into its care and it cannot simply abandon its obligation to the Appellant by sending her to a hospital and refusing to re-admit her after cleared by the hospital to return.

The Appellant currently has no acute condition, psychiatric or otherwise, requiring hospital admission. She has been fully cleared for return to the Facility. The Facility has not met its burden to prove that discharge is necessary, nor has it developed an appropriate discharge plan.


DECISION



Hempstead Park Nursing Home has not established that the Appellant's discharge was necessary and that the discharge plan was appropriate.

1. Hempstead Park Nursing Home is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the Facility, pursuant to 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: Albany, New York
October 7, 2024


Tina M. Champion
Administrative Law Judge

TO:  
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