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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

October 7, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o ██████████
██████████

Nicole Reichmann, Administrator
Ocean Gardens Care Center
64-11 Beach Channel Drive
Arverne, New York 11692

Angela Shaw, LMSW
The Legal Aid Society of New York
120-46 Queens Boulevard
Kew Gardens, New York 11415

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**

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

██████████

Appellant,

from a determination by

Ocean Gardens Care Center

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION

DA# 24-6458

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: Webex videoconference

Hearing Date: October 1, 2024

Parties: Ocean Gardens Care Center
64-11 Beach Channel Drive
Arverne, New York 11692
By: Nicole Reichmann, Administrator

██████████
By: Angela Shaw, LMSW
The Legal Aid Society of New York
120-46 Queens Boulevard
Kew Gardens, New York 11415

the Appellant ██████████ Resident A's ██████████. The CNA instructed the Appellant to stop attacking Resident A, and removed the Appellant from the room. (Exhibit 1.)

3. Within an hour of receiving the CNA's report of the Appellant's conduct, Facility staff contacted law enforcement, who removed the Appellant from the premises. Resident A was transported to ██████████ Hospital for an evaluation. (Exhibit 1.)

4. On ██████████, 2024, ██████████ Criminal Court Judge ██████████ issued orders of protection on behalf of Resident A and the CNA requiring the Appellant to maintain a distance of at least ██████ yards from either individual. The specified limitations within each order are subject to "incidental contact" at the Facility. (Exhibit 1.)

5. On or about ██████████, 2024, police transported the Appellant to ██████████ Hospital. (Exhibit 1.)

6. The Appellant remains at ██████████ Hospital pending the outcome of this appeal.

ISSUES

Has the Facility discharged the Appellant?

If the Facility has discharged the Appellant, was the Facility's determination correct and its proposed discharge plan appropriate?

APPLICABLE LAW

A residential health care facility (also referred to in the 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).

Transfer and discharge shall include movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge shall not refer to movement of a resident to a bed within the same certified facility, and does not

include transfer or discharge made in compliance with a request by the resident, the resident’s legal representative or health care agent, as evidenced by a signed and dated written statement, or those that occur due to incarceration of the resident. 10 NYCRR § 415.3(i). Transfer and discharge rights of residential health care facility residents are set forth in Department regulations at 10 NYCRR § 415.3(i) and federal regulations at 42 CFR § 483.15(c).

DISCUSSION

At the hearing, the parties presented conflicting interpretations of the ██████████ Court’s protective orders’ provision for “incidental contact” at the Facility’s address. The Appellant’s representative contended that the orders of protection allow the Appellant to reenter the Facility’s premises but that he must stay at least ██████ yards away from the CNA and Resident A. (Recording @ 12:54, 15:32.) By contrast, Facility Assistant Director of Nursing, Mary Ellen Finneran, testified that an investigator from the New York State Office of the Attorney General contacted her on ██████████ 2024, and informed her that Facility staff should call the police if the Appellant attempted to reenter the nursing home’s premises. (Recording @ 8:41, 22:18.)

The Appellant’s representative contended that the Appellant cannot remain at ██████████ Hospital indefinitely, and that the Facility must identify an alternative discharge location if it remains unwilling to readmit the Appellant. (Recording @ 23:05.) ██████████ ██████████ ██████████ Hospital’s Social Work Supervisor, inquired whether the Facility could utilize 1:1 monitoring for the Appellant as a way of ensuring that the distance restrictions in the protective order would be maintained, and noted that the nursing home occupies a six-story building. (Recording @ 19:19.) Ms. Finneran confirmed that the Facility does not have locked units to ensure that the Appellant maintains the required distance from Resident A and the CNA. (Recording @ 10:22.)

This interpretation does not explain why the protective order contains language that clearly contemplates the possibility that the Appellant might be present at the Facility.

The Appellant's argument presupposes that the Facility has discharged the Appellant. In response to the Facility's call for help, law enforcement removed the Appellant from the nursing home's premises and ultimately brought him to [REDACTED] Criminal Court, where a judge issued orders of protection for both Resident A and the CNA. The Facility sought assistance of local police to address the Appellant's behavior but did not have the intention of permanently removing him. Law enforcement transported the Appellant to [REDACTED] Hospital, not the Facility.

The Appellant's representative offered a plausible interpretation of the protective order, and the Appellant's witness attempted to devise a compromise with the Facility that recognizes the advice given by law enforcement. However, the record fails to establish that the Appellant's conditions are sufficiently stable at present for his return.

Based on the limited information at this hearing and the restrictions set forth in the orders of protection (even if viewed in the manner suggested by the Appellant's representative), the Facility is justified in not allowing the Appellant to return at this time. In particular, there is virtually no information from [REDACTED] Hospital that the Appellant is now stable and appropriate for return to nursing home care. For the reasons set forth above, this hearing request is premature and there is no issue to be decided.

When the hospital determines the Appellant is ready for discharge, the Facility has an obligation to evaluate him. If the Facility then determines that it is unable to care for the Appellant, it must issue a discharge notice and devise an appropriate discharge plan. "Notice of

Transfer or Discharge and Permitting Residents to Return”, DAL-NH 19-07 (reissued October 11, 2022); “Transfer and Discharge Requirements for Nursing Homes”, DAL-NH 15-06.

DECISION

The Facility has not discharged the Appellant. There is no issue to be decided pursuant to 10 NYCRR § 415.3(i).

Dated: October 7, 2024
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge