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**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

November 21, 2024

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Delmar Center for Rehabilitation and Nursing
125 Rockefeller Road
Delmar, New York 12054

Yoni Lautman, Nursing Home Administrator
Delmar Center for Rehabilitation and Nursing
125 Rockefeller Road
Delmar, New York 12054

Gloria Murray, Ombudsman Coordinator
Long Term Care Ombudsman Program
Catholic Charities Tri-County Services
1462 Erie Boulevard 2nd Floor
Schenectady, NY 12305

RE: In the Matter of [REDACTED] - 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

[REDACTED]

Appellant,

from a determination by

DELMAR CENTER FOR REHABILITATION
AND NURSING,

Respondent,

to discharge her from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Date: November 18, 2024

Held at: Videoconference via WebEx

Parties:

[REDACTED]
c/o Delmar Center for Rehabilitation and Nursing
125 Rockefeller Road
Delmar, New York 12054

By: No appearance

Delmar Center for Rehabilitation and Nursing
125 Rockefeller Road
Delmar, New York 12054

By: Yoni Lautman, Nursing Home Administrator

COPY

DECISION

JURISDICTION

By notice dated [REDACTED] 2024, Delmar Center for Rehabilitation and Nursing (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).

HEARING RECORD

ALJ Exhibits: 1 – Letter with Notice of Hearing and Transfer/Discharge Notice

Facility Exhibits: 1 – Social Work Progress Notes
2 – IDT Meeting Note
3 – Bedside Kardex Report
4 – MD Progress Notes
5 – PA Progress Note [REDACTED] 24
6 – PA Progress Note [REDACTED] 24

Appellant Exhibits: None

Facility Witnesses: Yoni Lautman, Nursing Home Administrator
Meghan Goodspeed, Director of Social Work
Christine Neri, Unit Manager

Appellant Witnesses: None

Ombudsman: Gloria Murray

Also Present: [REDACTED] Independent Living Center

A digital recording of the hearing was made. (29:24 in duration.)

ISSUES

Has the Facility established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female who was initially admitted to the Facility on [REDACTED] 2024, post-hospitalization. (Exhibit [Ex.] 5; Testimony [T.] Neri.)
2. The Appellant has repeatedly refused to participate in therapy offered by the Facility. (Ex. 1; T. Neri.)
3. The Appellant is independent in all her activities of daily living (ADLs) and capable of managing her medications. (Exs. 2-6; T. Neri.)
4. The Appellant has no skilled nursing needs and is medically stable for discharge to the community. (Exs. 2, 4-6; T. Lautman, Neri.)
5. On [REDACTED] 2024, the Facility issued a Transfer/Discharge Notice to the Appellant which proposed discharge to [REDACTED], an assisted living facility in [REDACTED], New York. (ALJ Ex. I.)
6. The Transfer/Discharge Notice states that the Appellant will be discharged on [REDACTED] 2024, because her health has improved sufficiently so that she no longer needs the services provided by the Facility. (ALJ Ex. I.)
7. The Appellant timely appealed the Facility's discharge determination.
8. The Appellant has remained at the Facility during the pendency of the appeal.

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 Appellant was provided with a Notice of Hearing on [REDACTED] 2024. In the ten days between service of that Notice of Hearing and the hearing, the Appellant corresponded with the Bureau of Adjudication via email on multiple occasions regarding the hearing. The Appellant requested a specific ombudsman and a specific representative from Independent Living Center [REDACTED] be present at the hearing. Both individuals were sent invitations to attend the hearing and appeared. The Appellant sent multiple emails to the Bureau of Adjudication immediately prior to the hearing requesting an adjournment for reasons including unavailability of the ombudsman and lack of access to a device on which she could join the hearing by videoconference. The ombudsman was present at the hearing and knew nothing of her "unavailability." The Facility offered the Appellant an iPad to utilize in her room for the hearing and the Appellant declined. The Facility then offered the Appellant the option to join the Director of Social Work in her office for the hearing and the Appellant again declined. The Appellant also

indicated for the first time in an email sent the Saturday afternoon before the scheduled Monday morning hearing, eight days after receiving the Notice of Hearing, that she wanted an adjournment to obtain an attorney. The Appellant was afforded the opportunity to appear at the hearing and to make her request in person for an adjournment to obtain counsel. She declined to do so even after being informed by the Director of Social Work, at the direction of the Administrative Law Judge (ALJ), that the hearing would proceed if she chose not to appear. The Appellant had ample opportunity and the ability to appear and make her request for an adjournment if one was still desired, or to appear and participate in the hearing. She instead chose to stay in her room and not appear. The hearing proceeded in her absence and the record closed at the conclusion of the hearing on [REDACTED] 2024.¹ After the record closed, the Appellant sent the ALJ more than a dozen emails. The Facility also sent one email. The majority of the post-hearing emails to the ALJ were sent ex parte. All communication received after the record closed was not considered in rendering this decision and is not made part of the hearing record.

The testimony and documentary evidence consistently and credibly supports that the Appellant has no skilled nursing needs and is medically stable and functionally able to be discharged to the community. The testimony and documents are uncontradicted by the Appellant. The Facility has met its burden to show that the Appellant's health has improved sufficiently such that discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2).

The Facility has determined to discharge the Appellant to an assisted living facility in [REDACTED] New York. The uncontradicted testimony and evidence support that this is an appropriate and safe setting for the Appellant. The uncontradicted testimony and evidence also demonstrate that

¹ The ombudsman and representatives from Independent Living Center were permitted to stay in the hearing as the request from Appellant that they be permitted to attend was not rescinded. They remained for the duration of the hearing as silent observers as there was no indication that they were authorized to speak on behalf of the Appellant.

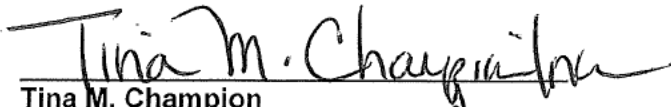
the Facility made several attempts to engage the Appellant in discharge planning and the Appellant rejected those efforts by means of verbal refusals, [REDACTED], failing to fill out paperwork, and [REDACTED] a list of assisted living and independent living facilities. No local assisted living facility has accepted the Appellant.² The Facility also offered the Appellant the option of being discharged to the local Department of Social Services for placement at a local homeless shelter so that she can stay in the area. The Appellant also rejected this option. While the Appellant reportedly desires to stay local, the Facility has been unable to identify a local assisted living or independent living facility that is willing to accept her, and the Appellant has declined to meaningfully engage in her own discharge planning. The Facility has shown that discharge to [REDACTED] is a safe and appropriate discharge location. The Appellant may choose, in the alternative, to be discharged to the local DSS for placement in a homeless shelter.

DECISION

Delmar Center for Rehabilitation and Nursing has established that its determination to discharge the Appellant is permissible, and that its discharge plan is appropriate.

1. The Appellant may 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: November 21, 2024
Menands, New York


Tina M. Champion
Administrative Law Judge

² At least one local assisted living facility declined to accept the Appellant for admission due to the Appellant having an outstanding bill with a different assisted living facility.

TO:

[REDACTED]
c/o Delmar Center for Rehabilitation and Nursing
125 Rockefeller Road
Delmar, New York 12054
[REDACTED]

Yoni Lautman, Nursing Home Administrator
Delmar Center for Rehabilitation and Nursing
125 Rockefeller Road
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Gloria Murray, Ombudsman Coordinator
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