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**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

November 27, 2024

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Dr. Susan Smith McKinney Nursing Home
549 Albany Avenue
Brooklyn, New York 11203

Sara Freizer, DSW
Dr. Susan Smith McKinney Nursing Home
549 Albany Avenue
Brooklyn, New York 11203

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: cmg
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

**Dr. Susan Smith McKinney Nursing
and Rehabilitation Center,**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

Hearing before: Kathleen Dix
Administrative Law Judge
November 26, 2024
By WebEx Videoconference

Parties: Dr. Susan Smith McKinney Nursing
and Rehabilitation Center
594 Albany Avenue
Brooklyn, New York 11203
By: Sara Freizer, Director of Social Work

[Redacted] Appellant
c/o Dr. Susan Smith McKinney Nursing and
Rehabilitation Center 594 Albany Avenue
Brooklyn, New York 11203

JURISDICTION

By notice dated [REDACTED] 2024, Dr. Susan Smith McKinney Nursing and Rehabilitation Center, (Respondent), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge / transfer [REDACTED] (Appellant) from care and treatment in its facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(i).

The hearing was held on [REDACTED] 2024, in accordance with PHL 2803-z, 10 NYCRR 415.3(i), and 42 CFR 483.15(c); via Webex videoconference. A digital recording of the hearing was made. (34m.)

HEARING RECORD

ALJ Exhibits:

- I. Notice of Hearing (4 Pages)

Respondent Exhibits:

- A. Department of Homeless Services Acceptance E-mail (3 Pages)
- B. Physician's Progress Note, dated [REDACTED] 2024(1 Page)
- C. Nursing Progress Note, dated [REDACTED], 2024 (1 Page)
- D. Physical Therapy Discharge Summary (3 Pages)
- E. Occupational Therapy Discharge Summary (3 Pages)

Appellant Exhibit:

None

Respondent Witnesses:

Sara Freizer, Director of Social Work
Beena Alexander, M.D.
Karen Williams, Social Worker
Margaden Oregela, Assistant Director of Nursing

Appellant Witnesses:

[REDACTED] Appellant

ISSUES

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

FINDINGS OF FACTS

1. Respondent is a residential health care facility, specifically a nursing home within the meaning of PHL § 2801.2 and 10 NYCRR § 415.2(k), located in Brooklyn, New York.

2. The Appellant is a [REDACTED]-year-old male who was admitted to the facility on [REDACTED] 2020 for short term rehabilitation after hospitalization. (Recording @ 13:30, 16:00).

3. By notice dated [REDACTED] 2024, the Respondent advised the Appellant of its determination to discharge him on [REDACTED] 2024, on the grounds that "his health has been significantly stabilized and no longer needs the services of [its] facility." (ALJ Exhibit I).

4. The Discharge Notice advised the Appellant he would be discharged to [REDACTED] New York [REDACTED], a Department of Homeless Services shelter. (ALJ Exhibit I).

5. A treating physician's progress noted dated [REDACTED], 2024 states that the Appellant is medically cleared for discharge and appropriate for discharge to a shelter. (Exhibit B.)

6. A nurse's progress noted dated [REDACTED] 2024 states that the Appellant is alert and oriented "x3"; he is independent in all his activities of daily living (ADL); and he transfers and ambulates independently without the use of assistive devices. (Exhibit C.)

7. The Respondent's Physical Therapy Discharge Summary dated [REDACTED] 2021 states that the Appellant was discharged from therapy because his highest practical level of functioning was achieved. The summary also states that the

Appellant is able to perform functional transfers and ambulate ██████████ feet, without assistive devices, with supervision. (Exhibit D.)

8. The Respondent's Occupational Therapy Discharge Summary dated ██████████ ██████████ 2022, states that the Appellant was discharged because his highest practical level of functioning was achieved. The summary also states that the Appellant has significantly decreased pain in ██████████ extremities for participation in all ██████████ body ADL's, with set up assistance, and demonstrates opposition of ██████████ within functional limits. (Exhibit E.)

9. The Appellant timely appealed the Respondent's discharge determination and proposed discharge location.

10. The Appellant remains at the Respondent's facility pending the outcome of this hearing.

APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, is a residential facility providing nursing care to sick, invalid, infirm, disabled or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital. PHL § 2801; 10 NYCRR § 415.2(k). Transfer and discharge rights of nursing home residents have been codified in PHL § 2803-z and set forth at 10 NYCRR § 415.3(i) which provides, in pertinent part, that the facility shall:

(1) (i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility:

(a) the resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that:

...

(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.

...

(vi) 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, and provide a discharge summary pursuant to section 415.11(d) of this Title.

When alleging that a transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by its facility, the necessity of the transfer or discharge must be documented in the resident's medical record by the resident's physician. 10 NYCRR § 415.3(i)(l)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(A).

The Respondent has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR § 415.3(i)(2)(iii)(b).

DISCUSSION

Grounds for Discharge

The Appellant, a [REDACTED]-year-old man, was admitted to the Respondent's facility on [REDACTED] 2020, for short term rehabilitation after hospitalization. (Recording @ 13:30, 16:00.) The Respondent now asserts that the Appellant's health has been significantly stabilized and that he no longer needs the services of its facility. (ALJ Exhibit I.)

Before the Respondent seeks to discharge the Appellant, the necessity of the transfer or discharge must be documented in the resident's medical record by the resident's physician. 10 NYCRR § 415.3(i)(l)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(A). The Appellant's medical record contains a progress note of Dr. Beena Alexander, the Appellant's physician, who stated that the Appellant has been medically cleared for discharge. (Exhibit B.) Further, Dr. Alexander testified that

Appellant's current medical conditions are stable, for which he can continue his medical care in the community as an outpatient, and that he no longer needs the services of the Respondent. (Recording at 13:08, 13:23, 14:06, 14:12.)

Karen Williams, Social Worker, testified that the Appellant was originally admitted to the Respondent's facility for short term rehabilitation for assistance with personal care, that he has completed his physical and occupational therapies and achieved his prior level of functioning, he has been deemed medically stable for discharge and he no longer has any skilled nursing needs. (Recording 16:00-16:43.)

Margaden Oregela, Assistant Director of Nursing, testified that the Appellant currently receives no skilled nursing care, can dress and feed himself, and can ambulate throughout the facility without assistive devices. Ms. Oregela further testified that all of the Appellant's medical conditions are stable and being treated with medications that he can take on his own, and that he can follow-up with his medical care as an outpatient in the community. (Recording @ 20:54-21:22, 30:36.)

The Appellant objects to being discharged and testified that he has a lot of problems including trembling [REDACTED] and an issue with his [REDACTED] and claimed he [REDACTED] (Recording @24:14.) The Appellant further acknowledged, however, that while he needs assistance with walking, he does walk independently but is careful while doing so. (Recording @ 32:00.) The Appellant also testified that he could go to doctors in the community on an outpatient basis, but he cannot do so by himself. (Recording @ 27:29-27:36.) In this regard, Ms. Williams, and Ms. Freizer both testified that the shelter system has social workers available to assist the Appellant and make accommodations for his attendance at medical appointments. (Recording @ 28:26, 31:43.)

The medical evidence in this matter clearly supports that the Appellant is

functional in his ADLs and is medically stable such that he can receive all of his medical care on an outpatient basis; the Appellant is no longer in need of the skilled services of the Respondent. The Appellant has offered no professional medical opinion to controvert the Respondent's medical evidence. The Respondent has met its burden and established permissible grounds for discharge.

Discharge Plan

The discharge notice advised the Appellant he would be discharged to [REDACTED] [REDACTED] New York [REDACTED] a Department of Homeless Services shelter. (ALJ Exhibit I).

The Appellant objects to the discharge plan because he believes that the shelter is not a good discharge location for him; he did not agree to, nor does he want to, go to a shelter. The Appellant testified that a shelter is not safe; shelters are scary, he is scared, and he believes that if he goes into a shelter, he is going to die. The Appellant stated that he ceased working in [REDACTED] and that he previously lived in an apartment with, and rented by, another person who passed away, and that apartment is no longer available to him. For discharge planning, the Appellant stated that he reached out to his [REDACTED] but was unable to make contact with her; he believes she is sick. The Appellant also stated that he has friends with whom he speaks daily, but he has not yet asked any friend if he can stay with them. The Appellant said he would be asking his friends for a place to stay. (Recording @ 24:37- 27:29, 27:32-29:39.)

The Respondent's witnesses testified that in conducting discharge planning they first looked to whether the Appellant had an appropriate homestead. Finding he did not, they referred him to assisted living facilities and then to transitional housing. In both instances the Appellant was not accepted, or was found ineligible, because he has no

income and is ██████████. After the Appellant identified wanting to be discharged to his ██████████ home, the Respondent's social worker reached out to the Appellant's ██████████ and left voice messages for her but did not receive any return call. The Appellant advised the Respondent that he had friends whom he could live, but when asked for their contact information so that they could assist the Appellant, the Appellant stated that he had no contact information, names or phone numbers, for them. Aside from his ██████████ the Appellant did not offer any other options for his discharge location, nor has he demonstrated further efforts on his own to develop a discharge plan. The Respondent referred the Appellant to the New York City Department of Homeless Services, and he was accepted. (Recording @ 7:54, 8:46, 16:56-19:01; Exhibit A.) The Respondent asserts that the shelter is a safe discharge location, as long as the Appellant continues to receive medical care and takes his medications. (Recording @ 9:05, 14:17-14:24, Exhibit B.)

The proposed discharge location fulfills the Respondent's obligation to provide an appropriate post-discharge plan of care that addresses the Appellant's medical needs and how they will be met after discharge, as required by 10 NYCRR § 415.3(i)(1)(vi). While the Appellant is free to reach out to family or friends to secure an alternative discharge location, the shelter that the Respondent has secured is an appropriate discharge location.

DECISION

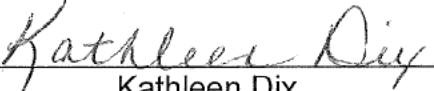
Dr. Susan Smith McKinney Nursing and Rehabilitation Center has established that the discharge of the Appellant is necessary and that the discharge plan is appropriate.

1. Dr. Susan Smith McKinney Nursing and Rehabilitation Center is

authorized to discharge the Appellant pursuant to the Notice of Discharge dated ██████████ 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: Menands, New York
November 27, 2024


Kathleen Dix
Administrative Law Judge

To: Sara Freizer, Director of Social Work
Dr. Susan Smith McKinney Nursing
and Rehabilitation Center
594 Albany Avenue
Brooklyn, New York 11203

██████████ Appellant
c/o Dr. Susan Smith McKinney Nursing
and Rehabilitation Center
594 Albany Avenue
Brooklyn, New York 11203