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**Department
of Health**

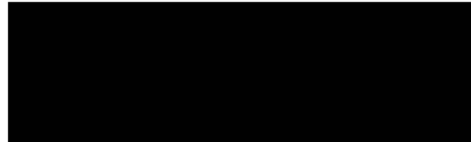
KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

December 11, 2024

CERTIFIED MAIL/RETURN RECEIPT



Nachman Feig, Administrator
Boro Park Center
4915 10th Avenue
Brooklyn, New York 11219

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

BORO PARK CENTER,

Respondent,

to discharge him from a residential health care facility.

COPY

DECISION

Before: Tina M. Champion
Administrative Law Judge

Date: December 6, 2024

Held at: Videoconference via WebEx

Parties:

[REDACTED]

By:

Boro Park Center
4915 10th Avenue
Brooklyn, New York 11219

By: Nachman Feig, Nursing Home Administrator
nfeig@boroparkcenter.net

JURISDICTION

By notice dated [REDACTED] 2024, Boro Park Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (Appellant). The Appellant was discharged to home on [REDACTED] 2024. The Appellant subsequently 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: I – Letter with Notice of Hearing and Transfer/Discharge Notice

Facility Exhibits: 1 – PT Discharge Summary
2 – Resident Information
3 – Summary of Care
4 – Medical Progress Notes
5 – IDT Discharge Instructions

Facility Witnesses: Jason Zimmerman, D.O.
Jeff Gryzbowski, Director of Rehabilitation
Rebecca Szmulewicz, Director of Social Work

Appellant Exhibits: A – Therapy Minutes Report
B – GG Summary
C – GG Self-Care & Mobility Evaluation

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

Also Present: Nachman Feig, Nursing Home Administrator
Aaron Szydlo, Associate Nursing Home Administrator
Cyrina Benjamin, Director of Nursing
Izzy Pupko, Assistant Director of Rehabilitation

A digital recording of the hearing was made. (1:29:28 in duration, comprised of two recordings.)

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 male who was initially admitted to the Facility on [REDACTED] [REDACTED] 2024, post-hospitalization and acute inpatient rehabilitation for an [REDACTED] (Exhibits [Exs.] 2 & 3; Testimony [T.] Zimmerman.)

2. The Appellant received [REDACTED] during his stay at the Facility. He also received physical therapy (PT), occupational therapy (OT), speech therapy (ST), and wound care. (Ex. 3; T. Zimmerman.)

3. The Appellant developed [REDACTED] during his stay at the Facility, which caused a decline in his functional ability. (Exs. 3 & 4; T. [REDACTED])

4. In [REDACTED] 2024, the Appellant had reported progress in rehabilitation, was medically stable, and was cleared to be discharged to home with home services put into place. (Facility Exs. 1 & 3; T. Zimmerman.)

5. The Appellant had [REDACTED] and fluctuating functional ability at times while in the Facility, particularly on days he received [REDACTED] (Ex. 3; T. Zimmerman, Gryzbowski.)

6. On [REDACTED] 2024, the Facility issued a Transfer/Discharge Notice to the Appellant which proposed discharge to his home in [REDACTED], New York. (ALJ Ex. I.)

7. The Transfer/Discharge Notice states that the Appellant was to be discharged on [REDACTED] 2024, because his health has improved sufficiently so that he no longer needs the services provided by the Facility, as evidenced by the Appellant's progress. (ALJ Ex. I.)

8. The Appellant was discharged to home on [REDACTED], 2024. (T. [REDACTED])

9. The Appellant sustained multiple falls at home after his discharge. (T. [REDACTED])

10. On [REDACTED], 2024, the Appellant was admitted to a hospital, where he has remained throughout this proceeding.

11. The Appellant timely appealed the Facility's discharge determination.

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

Reason for Discharge

The Appellant is a [REDACTED]-year-old male who was initially admitted to the Facility on [REDACTED] 2024, for rehabilitation. He received PT, OT, ST, and wound care during his stay at the Facility. The Appellant was discharged to home on [REDACTED] 2024. While at the Facility, the Appellant developed [REDACTED], and experienced a decline in his functioning which improved

post-treatment. The Appellant received [REDACTED] three times a week and experienced fluctuating functional ability, particularly on [REDACTED] days when he was also more [REDACTED]

Jason Zimmerman, D.O., the Facility's Medical Director, testified that the Appellant was medically stable for discharge in [REDACTED] 2024, and that the Appellant had reached a good level of functional status in PT and was able to ambulate [REDACTED] feet and negotiate [REDACTED] steps. Dr. Zimmerman acknowledged that the Appellant intermittently has less tolerance with his functional ability on [REDACTED] or other days.

Jeff Gryzbowski, Director of Rehabilitation, also testified that the Appellant can ambulate [REDACTED] feet and that his ability can fluctuate sometimes due to [REDACTED] from [REDACTED]. Mr. Gryzbowski explained that the Facility documents ambulation distance that is continuous rather than cumulative, and that breaks taken while ambulating would have been documented. Mr. Gryzbowski testified that the Appellant was discharged from PT on [REDACTED] 2024, but that ambulation and range of motion exercises were still offered to the Appellant daily Monday through Friday. Mr. Gryzbowski noted that the PT aide verbally confirmed that such therapy was provided to the Appellant. Mr. Gryzbowski further testified that any declination in functioning ability post discharge from PT would have triggered an evaluation, and that the Appellant had no decline since his discharge from therapy.

Mr. Gryzbowski acknowledged that [REDACTED] 2024, and [REDACTED] 2024, evaluations completed by the Facility both documented that walking 150 feet was not attempted during the evaluation due to medical or safety concerns. (Resident Exs. B & C.) Mr. Gryzbowski stated that the entries were errors and maintained that the Appellant was, in fact, able to ambulate [REDACTED] feet. Mr. Gryzbowski also pointed out that the Appellant, nor his [REDACTED], appealed Medicare's decision to end coverage for the Appellant's physical therapy at the Facility.

Rebecca Szmulewicz, Director of Social Work, testified that the Appellant was discharged to home with home care services. The home care services were coordinated prior to the Appellant's discharge on [REDACTED] 2024, and the selected agency was notified of the Appellant's discharge date. Ms. Szmulewicz acknowledged that there was a three-day gap in the start of services provided by the certified home health aide and explained that the home health agency determines the date for start of care.

[REDACTED] the Appellant's [REDACTED] testified as to the Appellant's health during his admission to the Facility. She testified that the Appellant needs therapy continuously to maintain his functional ability due to a [REDACTED] injury. [REDACTED] testified in detail as to the Appellant's lack of ability to function independently upon his arrival at home on [REDACTED] 2024. She stated that the Appellant was unable to manage two steps to utilize the chairlift upon his arrival at home. She also testified as to numerous falls he sustained in the days following his return home, one of which required using a [REDACTED] to cut the [REDACTED] so that the Appellant could be removed from the [REDACTED] after falling near the door.

[REDACTED] testified that the Appellant never had strength in his [REDACTED] body after returning home, and that he continued to decline at home without PT. She testified that eight days later, on [REDACTED] 2024, the Appellant was admitted to the hospital due to his deconditioning and her inability to care for him at home. [REDACTED] acknowledged that during his time at home, the Appellant left home for [REDACTED] and, at least on one occasion, to go to [REDACTED]

The Appellant testified that he was not ready to go home at the time of his discharge. He testified that his documented ambulation distance at the Facility included stops to rest. The Appellant acknowledged that he had been ambulating in the hallway up until the week before his

discharge, although it may not have been every day, and that he was utilizing the gym and a bike, which he found useful.

It is undisputed that the Appellant has declined since his return home. It is also undisputed that he may need skilled nursing services at this point. However, the testimony of the Facility's medical director and director of rehabilitation credibly demonstrate that the Appellant was medically stable for discharge to home on [REDACTED] 2024, as well as functionally able to be discharged with the provision of home services. The Facility timely arranged home services with a certified home health agency and timely notified the agency of the Appellant's discharge date. The three-day gap in provision of services to the Appellant at home after his discharge is unfortunate and may have contributed to his decline in functioning but does not negate the Facility's valid determination to discharge the Appellant on [REDACTED] 2024, due to improvement such that the Appellant no longer needed skilled nursing services as of that date. 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).

Discharge Location


It is undisputed that the Appellant's desired discharge location prior to and on [REDACTED] 2024, was to his home in the community. The Facility coordinated home health services for the Appellant and discharged him with a rolling walker and standard wheelchair. Due to a steady decline after returning home, the Appellant was hospitalized. Although the Appellant has declined and home may no longer be a safe location for him, the Facility has met its burden to show that the Appellant was functionally appropriate and medically stable to be discharged to home as of [REDACTED] 2024.

DECISION

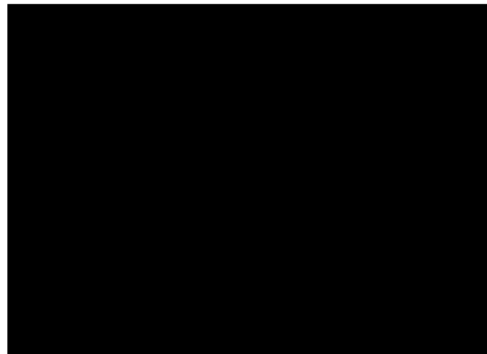
Boro Park Center has established that its determination to discharge the Appellant was permissible, and that its discharge plan was appropriate.

1. The Appellant was properly discharged in accordance with the Transfer/Discharge Notice dated [REDACTED]
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: December 11, 2024
Menands, New York


Tina M. Champion
Administrative Law Judge

TO:



Nachman Feig, Nursing Home Administrator
Boro Park Center
4915 10th Avenue
Brooklyn, New York 11219
nfeig@boroparkcenter.net