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**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

December 9, 2024

CERTIFIED MAIL/RETURN RECEIPT



Anna Hock, Esq.
300 Garden City Plaza, Suite 100
Garden City, New York 11530

Mendi Brodie, Nursing Home Administrator
Yonkers Gardens Center
115 S. Broadway
Yonkers, New York 10701

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

COPY

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

[REDACTED]

Appellant,

from a determination by

YONKERS GARDENS CENTER,

Respondent,

to discharge him from a residential health care facility.

DECISION

Before: Tina M. Champion
Administrative Law Judge

Date: December 5, 2024

Held at: Videoconference via WebEx

Parties:

[REDACTED]

By: Anna Hock, Esq.
300 Garden City Plaza, Suite 100
Garden City, New York 11530
a.hock@bpn.law

Yonkers Gardens Center
115 S. Broadway
Yonkers, New York 10701

By: Mendi Brodie, Nursing Home Administrator
ycadmin@yonkersrehab.com

JURISDICTION

By notice dated [REDACTED], 2024, Yonkers Gardens 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 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 – Adjudication Letter with Notice of Hearing
II – Appellant Authorization for Representation

Facility Witnesses: Kelliann Murphy, Director of Social Work
Osama Sayegh, M.D., Attending Physician
Melissa McCoy, R.N., Unit Manager

Facility Exhibits: 1 – Statements and Progress Notes
2 – Admission Record, BIMS and Incident Summary

Appellant Witnesses: Manny Brodie, Nursing Home Administrator
[REDACTED] Appellant
Shawn Forde, Social Worker and Supervisor for Inpatient Medicine

Appellant Exhibits: A – Refusal Notes
B – PRI

Also Present: Joneb Alday, Director of Nursing (Facility)
Ester Appalo, Assistant Director of Nursing (Facility)
[REDACTED] M.D. [REDACTED]
[REDACTED] Patient Care Associate [REDACTED]

A digital recording of the hearing was made. (2:07:17 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 male who was admitted to the Facility on [REDACTED] 2024, from [REDACTED] with diagnoses including [REDACTED] [REDACTED] (Facility Exhibit [Ex.] 2.)

2. The Appellant's Brief Interview for Mental Status (BIMS) score on [REDACTED], 2024, was [REDACTED]/15. (Facility Ex. 2.)

3. The Facility has transferred the Appellant to the hospital for [REDACTED] evaluation on more than one occasion in the past following incidents of aggression. Each time the Appellant was [REDACTED] cleared and returned to the Facility. (Testimony [T.] Sayegh.)

4. On [REDACTED] 2024, the Facility sent the Appellant to [REDACTED] (Hospital) for [REDACTED] evaluation following an incident where the Appellant was aggressively seeking out and [REDACTED] at another Facility resident, as well as having pushed the other resident's [REDACTED] off [REDACTED] and [REDACTED] onto the floor. (Facility Ex. 2; T. McCoy.)

5. At the time the Appellant was sent to the Hospital, the Facility issued a Transfer/Discharge Notice documenting discharge on [REDACTED] 2024, to the address of the Hospital and noting that the resident's needs cannot be met after reasonable attempts at accommodation in the Facility. The Facility further noted a [REDACTED] altercation with other resident's (sic)." (ALJ Ex. I.)

6. The Appellant was [REDACTED] and medically cleared by the Hospital later that same day and the Facility was advised of the clearance via a telephone call from a social worker at the Hospital. (T. McCoy; [REDACTED])

7. The Appellant was transported by ambulance from the Hospital to the Facility in the early morning on [REDACTED] 2024, at which time the Facility refused to allow the Appellant into the building. The Appellant was then transported back to the hospital and admitted as a social admission. (Resident Ex. A; T. [REDACTED]; McCoy.)

8. The Facility refuses to readmit the Appellant.

9. The Appellant has remained at the Hospital during the pendency of the appeal.

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

Manny Brodie, Nursing Home Administrator, acknowledges that a hospital is not an appropriate discharge location. The Facility issued a Transfer/Discharge Notice to the Appellant contemporaneous with his being sent to the hospital for [REDACTED] evaluation on [REDACTED] 2024, stating that the resident's needs cannot be met after reasonable attempts at accommodation in the Facility. Mr. Brodie, Unit Manager Melissa McCoy, R.N., and Attending Physician Osama Sayegh, M.D., testified that the Facility did not intend to permanently discharge the Appellant at the time he was transferred to the Hospital and that the Facility later, after the Appellant was [REDACTED] cleared for return to the Facility, determined that it would not accept the Appellant back into the Facility due to concern for the safety of staff and other residents.

The Facility has made no attempts to locate an appropriate discharge location for the Appellant, or to contact the Hospital to work collaboratively to find an appropriate discharge location for the Appellant, since the Appellant was transferred and [REDACTED] cleared on [REDACTED] (T. Murphy; Forde.)

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 the Appellant's behavior. 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 this. 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 him to a hospital and refusing to re-admit him after he has been cleared to return.

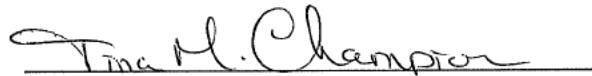
The Appellant currently has no acute condition [REDACTED] or otherwise, requiring hospital admission. He has been fully cleared for return to the Facility. The Facility has not met its burden to prove that discharge is necessary, nor has it developed an appropriate discharge plan.

DECISION

Yonkers Gardens Center has not established that the Appellant's discharge was necessary and that the discharge plan was appropriate.

1. Yonkers Gardens Center 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: December 9, 2024
Menands, New York


Tina M. Champion
Administrative Law Judge

TO:

[REDACTED]

Anna Hock, Esq.
300 Garden City Plaza, Suite 100
Garden City, New York 11530
a.hock@bpn.law

Mendi Brodie, Nursing Home Administrator
Yonkers Gardens Center
115 S. Broadway
Yonkers, New York 10701
ycadmin@yonkersrehab.com