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**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

January 3, 2025

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o The Riverside
150 Riverside Drive
New York, New York 10024

Allison Bellin, DSW
The Riverside
150 Riverside Drive
New York, New York 10024

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

**The Riverside Premier Rehabilitation
and Healing Center,**

Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION

#DA24-6494

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: Webex videoconference

Hearing Date: December 30, 2024

Parties: The Riverside Premier Rehabilitation and Healing Center
150 Riverside Drive
New York, New York 10024
By: Allison Bellin, DSW

[REDACTED]
Pro se

JURISDICTION

The Riverside Premier Rehabilitation and Healing Center, a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

Facility witnesses: Allison Bellin, Director of Social Services
Angela McDonald, LPN Manager
Tamara Nair, Social Worker
Leah Creash, Director, Rehabilitation Services

Facility exhibits: 1 – Admission Record
2 – Narrative by Allison Bellin dated [REDACTED] 2024
3 – Brief interview for mental status dated [REDACTED] 2024
4 – Discharge notice dated [REDACTED] 2024
5 – Progress note by Dr. Alicia Williams dated [REDACTED] 2024
6 – Physical therapy discharge summary dated [REDACTED] 2024
7 – Occupational therapy discharge summary dated [REDACTED] 24

Appellant witnesses: [REDACTED] Appellant

Appellant exhibits: A – Progress note by Dr. [REDACTED] dated [REDACTED] 2024
B – X-ray results dated [REDACTED] 24
C – Medical history

A digital recording of the hearing was made (2:04:23 in duration). The hearing notice and accompanying cover letter were placed in the hearing record as ALJ Exhibit I.

ISSUES

Has The Riverside Premier Rehabilitation and Healing Center established that its determination to discharge the Appellant is authorized and that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED] year-old female who was transferred from a hospital to The Riverside Premier Rehabilitation and Healing Center (Facility) on [REDACTED] 2021 for rehabilitation. She has been diagnosed with [REDACTED]

[REDACTED]

[REDACTED] (Exhibit 1.)

2. The Appellant is wheelchair-dependent but can independently perform all activities of daily living (ADLs). She was discharged from occupational and physical therapies on [REDACTED] 2024. (Exhibits 6, 7.)
3. By notice dated [REDACTED] 2024, the Facility advised the Appellant of its determination to discharge her on [REDACTED], 2024 because her health has improved sufficiently so that she no longer requires the services provided by the Facility. The notice advised the Appellant that she would be discharged to [REDACTED] located at [REDACTED] in [REDACTED] (Exhibit 4.)
4. The Appellant's record contains complete documentation by her physician, Dr. Alicia Williams, which describes the Appellant's current health status and confirms that the Appellant can be safely discharged to an assisted living facility. (Exhibit 5.)
5. The Appellant remains at the Facility pending the outcome of the hearing.

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. Public Health Law §§ 2801(2)-(3); 10 NYCRR § 415.2(k).

Transfer and discharge rights of residential health care facility residents have been codified in Public Health Law § 2803-z and are set forth in Department regulations at 10 NYCRR § 415.3(i). The regulation states, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(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.

When the facility transfers or discharges a resident because the resident's health has improved sufficiently that the resident no longer needs the services provided by the facility, the facility shall ensure that the resident's clinical record contains complete documentation made by the resident's physician and, as appropriate, the resident's interdisciplinary care team. 10 NYCRR § 415.3(i)(1)(ii)(a). The residential health care facility must prove that the discharge was necessary and the discharge plan appropriate. 10 NYCRR § 415.3(i)(2)(iii)(b).

DISCUSSION

The Appellant was initially admitted to the Facility for short-term rehabilitation on [REDACTED] 2021 post-hospitalization. (Exhibit 1.) She was subsequently hospitalized from [REDACTED] through [REDACTED] 2022, but not has been hospitalized since then. (Recording @ 1:24:53.)

The Facility determined that the Appellant's discharge is necessary because her health has improved sufficiently so that she no longer needs the services provided by the nursing home. (Exhibit 4.) The Appellant's clinical record includes complete documentation made by a physician and other members of her interdisciplinary team regarding its stated ground for discharge, as required by 10 NYCRR § 415.3(i)(1)(ii)(a); *see also* 42 CFR § 483.15(c)(2).

At the hearing, Leah Creash, the Facility's Director of Rehabilitation Services, testified that the Appellant is independently able to perform all ADLs, including propelling herself in her

wheelchair without physical assistance, and transferring in and out of her wheelchair unassisted. (Recording @ 19:04.) While she conceded that the Appellant has some physical limitations, Ms. Creash explained that an outpatient referral for occupational and physical therapy would enable the Appellant to continue to maintain her optimal functional levels. (Recording@ 41:00.) Angela McDonald, the Facility's LPN Manager on the floor in which the Appellant's room is situated, testified that the Appellant is not currently receiving specialty services at the Facility, or any services uniquely offered by a nursing home. (Recording @ 45:00.)

Despite being asked several times, the Appellant was unable to identify services that she requires which can only be provided by a nursing home. The Appellant's documentation demonstrates her receipt of continued specialized medical care outside of the Facility. (Exhibits A, B.) At the hearing, the Appellant contended that she requires continued physical and occupational therapies due to limitations in her ability to perform ADLs. She testified that she is unable to dress herself using her [REDACTED] and instead relies on her [REDACTED]. However, the Appellant stated that she now has difficulty with her [REDACTED] which has further diminished her ability to dress herself and dry her back after showering. (Recording @ 29:46.) Despite these difficulties, the Appellant is able to perform her own ADLs without help and thus continued nursing home care is not required. (Recording @ 52:28.)

The Appellant asserted that she requires certain [REDACTED] medications which the Facility has refused to provide. (Recording @ 46:02, 1:42:06.) However, the Appellant previously refused to attend a [REDACTED] appointment that Facility staff had coordinated for her with a [REDACTED] outside the Facility after a Facility physician stated he was unable to continue prescriptions for the requested medications without the Appellant undergoing a proper evaluation by a specialist. (Recording @ 46:36.) The Appellant insisted that such an appointment was not

necessary for the issuance of the prescriptions she has sought because she'd been receiving those medications for decades before her admission to the Facility. (Recording @ 46:50, 48:50.) The Appellant did not indicate that she required nursing home care to have any such medications prescribed if necessary.

The Appellant also stated that she needs [REDACTED] surgery, after which she will need [REDACTED] surgery. (Recording @ 23:56.) Although she repeatedly informed Facility staff that these surgeries are needed over the course of her nursing home stay, the surgeries were never scheduled, and are yet to be scheduled as of the date of this hearing. (Recording @ 1:04:11, 1:13:50, 1:44:11, 1:52:30.) The Appellant did not explain why nursing home care is required if no surgeries are imminent. The Appellant did not refute the Facility's evidence, and the Facility has established that the Appellant's health has improved sufficiently that she no longer needs the services of a nursing home.

The Facility proposed to discharge the Appellant to [REDACTED] an assisted living facility in [REDACTED]. (Exhibit 4.) [REDACTED] the Appellant's social worker at the Facility, discussed discharge planning with the Appellant numerous times, no less than quarterly, during care plan meetings with the Appellant since [REDACTED] 2022. (Recording @ 1:02:40.) Each time, the Appellant rejected possible discharge locations. The Appellant's [REDACTED] is unable to take her in, and the Appellant has no other home to go to, as she was [REDACTED] before her hospitalization and admission to the Facility. (Recording @ 15:49, 1:03:46.)

[REDACTED] explained that the Appellant would be able to access the same services at an assisted living facility as what she is receiving at the Facility. She would have a primary care physician on-site, and would be able to coordinate her own outpatient appointments, which she currently does. (Recording @ 1:07:11.) The Appellant would be able to receive physical and

occupational therapy, if needed, on an outpatient basis. (Recording @ 41:00.) She would receive needed medical transportation coordinated by her Medicaid Managed Long-Term Care Plan. (Recording @ 1:51:33.) [REDACTED] stressed that the Appellant would have more freedom in an assisted living facility than she currently has at the Facility. (Recording @ 1:06:55.)

[REDACTED] representatives have been communicating with the Appellant since [REDACTED] thus allowing the Appellant to obtain any and all needed answers to her questions. (Recording @ 1:06:22, 1:56:50.) The Appellant also has access to a computer at the Facility, which would have allowed her to identify alternative discharge locations. She has not offered any suggestions to [REDACTED] or any other Facility staff member. (Recording @ 1:03:26, 1:06:38.)

Although the Appellant reiterated that her medical needs are far greater than documented by the Facility and that she expected to have two surgeries at unknown future dates, she was nevertheless unable to articulate why the proposed discharge plan was not appropriate. (Recording @ 1:10:34, 1:13:08.) The Appellant explained that she must avoid [REDACTED] and must therefore limit [REDACTED] exposure. For that reason, she contended that she cannot share a room and would be required to do so at [REDACTED] (Recording @ 1:53:30.) However, the Appellant acknowledged that she shares a room at the Facility, and that she has occasionally been exposed to unwanted [REDACTED] and other stimuli by CNAs and her roommate there. (Recording @ 1:53:48.)

The Appellant also took issue with being relocated to [REDACTED]. She asserted that travel to her outpatient appointments, either by [REDACTED] would be very disorienting. (Recording @ 1:47:08, 1:56:17, 1:58:55.) The Appellant expressed concern with being able to venture out at all because [REDACTED] is unfamiliar to her. Given her medical need to avoid [REDACTED] the Appellant estimated that she wouldn't be able to leave her room at

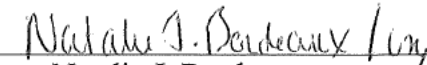
before 5 pm, at which point she'd have nowhere to go. (Recording @ 1:58:32.) However, she also testified that she is barely able to leave the Facility as it is because she is afraid to navigate with her wheelchair unaccompanied. (Recording @ 1:49:23, 1:50:51.) The Appellant's issues with would remain unchanged whether at the Facility or in an assisted living facility in

The proposed discharge plan addresses the Appellant's medical needs and how those needs will be met after discharge. 10 NYCRR § 415.3(1)(vi). Public Health Law § 2803-z requires that the Facility provide written notification to the Appellant 30 days prior to danger as it is not alleging danger. Public Health Law § 2803-z(c). While the Appellant's concerns appear to stem largely from her familiarity with the Facility and her multiple medical diagnoses, she has not refuted the Facility's evidence. For these reasons, the Facility's determination is sustained, and the Appellant may be discharged, as contemplated in the notice dated 2024, on or after 2025.

DECISION

The Riverside Premier Rehabilitation and Healing Center has established that its determination to discharge the Appellant is authorized and that its discharge plan is appropriate. The Facility is authorized to discharge the Appellant on or after 2025, in accordance with the 2024 notice.

Dated: January 3, 2025
Menands, New York


Natalie J. Bordeaux
Administrative Law Judge