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**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

January 13, 2025

CERTIFIED MAIL/RETURN RECEIPT

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

Yonatan Lautman, NHA
Delmar Center for Rehab & Nursing
125 Rockefeller Road
Delmar, New York 12054

Gloria Murray, Ombudsman Coordinator
Mike Burgess, Ombudsman
Long Term Care Ombudsman Program
1462 Erie Boulevard, 2nd Floor
Schenectady, New York 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: cmg
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

COPY

DECISION


Appellant,

from a determination by

DELMAR FOR REHABILITATION AND NURSING


to discharge her from a residential health care facility.

Before: Kimberly A. O'Brien
Administrative Law Judge (ALJ)

Held at: Videoconference via WebEx

Dates: January 7, 2025

Parties:


c/o Delmar Center for Rehabilitation and Nursing
380 Henry Street
Brooklyn, New York 11201

By: Pro se

*Support: Gloria Murray, Ombudsman Program Coordinator
Mike Burgess, Ombudsman

Yoni Lautman, Administrator
Delmar Center for Rehabilitation and Nursing
380 Henry Street
Brooklyn, New York 11201
By: Zakiya Thomas, Administrator

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) from the Facility (Discharge Notice). The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) 415.3(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR. The ALJ admitted two exhibits the Notice of Hearing and the Discharge Notice, and the [REDACTED], 2025 physician progress notes documenting that the discharge is necessary and the discharge location is appropriate. ALJ Exhibit (Ex.) 1 & ALJ Ex. 2. The Facility presented four witnesses: Jonathan Waldman M.D., Medical Director; Chistine Neri LPN, Unit Manager; Kim Sylvester, Director of Rehabilitation; and Meghan Goodspeed, Director of Social Work. The Appellant presented one witness, [REDACTED], Appellant's [REDACTED], and testified on her own behalf. A digital recording was made of the proceeding.

FINDINGS OF FACT

1. The Appellant is an [REDACTED]-year-old female who was admitted to the Facility from the hospital on [REDACTED] 2024. ALJ Ex. 1; Testimony (T.) Appellant, Waldman, Goodspeed.
2. The Appellant is independent with all activities of daily living (ADLs). The Appellant ambulates using a rollator walker. T. Waldman, Goodspeed, Sylvestri.
3. The Discharge Notice states that the Appellant will be transferred because the Appellant's health has improved sufficiently such that the Appellant no longer requires the services

of the Facility. The proposed discharge is to her apartment in [REDACTED] (home). ALJ Ex.

1.

4. Before being admitted to the facility the Appellant was a victim of a [REDACTED]. At the time she was receiving daily homecare services and the assigned aides did not come for [REDACTED] and the police found the Appellant in her apartment and took her to the hospital. She was admitted to the Facility for short term care and rehabilitation. T. Appellant, Waldman, Goodspeed.

5. Upon discharge the resident has been approved to receive six hours of home care services a day, seven days a week. The Facility is aware of the Appellant's concerns about her former aides and home care agency. The facility has identified another home care agency [REDACTED] (Agency) that will provide services/aides to the Appellant upon discharge from the Facility. The Agency has agreed to provide aides who meet the Appellant's preferred [REDACTED] and [REDACTED] to ensure the former aides will never be assigned to provide care to the Appellant. T. Goodspeed.

6. The Appellant timely appealed the Facility's discharge determination. The Appellant has remained at the Facility during the pendency of the appeal.

ISSUES

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

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, rehabilitation, 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). The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415(i)(1)(i)(a)(2), which states:

"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."

The Facility bears the burden to prove a discharge is necessary and the discharge plan is necessary and appropriate.10 NYCRR 415.3(i)(2)(iii).

DISCUSSION

The Facility's discharge notice states that the Appellant's health has improved, and she no longer requires the services it provides and proposed that the Appellant be discharged to her home. Dr. Waldman testified that the Appellant is medically stable and independent with her ADLs. Dr. Waldman has examined the Appellant on multiple occasions. After the Appellant's fall at the Facility she was sent to the emergency room and evaluated and returned to the Facility the same day. The Appellant's complaints about pain in her [REDACTED] have been addressed. There have been multiple evaluations and [REDACTED] and she was sent out of the Facility to see an [REDACTED] and no issue was noted. After the Appellant's fall, Dr. Waldman and other Facility care providers witnessed the Appellant had full use of her [REDACTED] Without complaint or indication of pain the Appellant was seen using [REDACTED] a wheelchair about the facility. The Appellant suffers from [REDACTED] and [REDACTED] and she has been receiving [REDACTED] and medication, which can continue upon discharge into the community. Dr. Waldman notes that since the Discharge Notice was issued the Appellant has remained in her room and has refused care and he believes the Appellant is "[REDACTED]" ALJ Ex. 2. Dr. Waldman met with the Appellant just

days before hearing and “assured her” that she is stable and that she can return to “independent living” and that it is “in her best interest.” ALJ Ex. 2.

Ms. Neri testified that while the Appellant continues to complain of pain in the [REDACTED] and stays in her room, she is independent with all her ADLs including transfers and has been seen ambulating about her room with a walker. Aides bring her meal trays and medications are given. The Appellant has no skilled needs.

Ms. Goodspeed, Director of Social Work, testified that the Facility has been discussing discharge with the Appellant since [REDACTED] 2024. The Appellant made a few requests to extend her stay which were granted. The Facility is aware of the Appellant’s concerns about her former aides and home health care agency. A new agency was found that can provide her with home care services. The Agency has agreed to accommodate the Appellant’s request for aides of a certain [REDACTED] and [REDACTED]. The Agency will confirm that the aides are available to provide ongoing services from [REDACTED], 2025, and the Appellant will not be discharged until the aides are available to provide care.

Ms. Sylvester testified that after the fall the Appellant was offered physical therapy (PT) to prepare for discharge. The Appellant has refused to participate. The Appellant is independent with transfers, toileting, can propel a wheelchair and independently ambulate using a walker.

The Appellant testified that after she suffered a fall at the Facility her right arm was injured and she is in pain and that is why she has not participated in PT. She wants to remain at the Facility because she is in pain. Before being discharged the Appellant wants to receive physical therapy to return to her level of physical functioning prior to being admitted to the Facility. The Appellant’s [REDACTED] testified that the Appellant has always exercised and her ability to do that has declined

significantly. The Appellant expressed concern about the quality of the homecare services that she has received in the past. The aides that she had were only [REDACTED] years old and did not treat her or her home with respect and victimized her. She is alone most of the time and even if the prescribed homecare services are provided upon discharge, she believes she needs more care.

The Facility has proven that the Appellant's health has improved sufficiently such that she no longer has skilled needs and the proposed discharge home with homecare services is available and appropriate to meet her needs. It is understandable that the Appellant is apprehensive about returning to the community. The Agency will accommodate her request about which aides will provide home care and the Facility will not discharge her until the aides are confirmed.

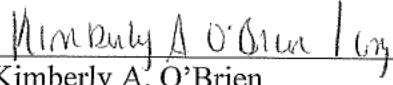
DECISION

The Facility has established that its determination to discharge the Appellant was correct, and that its discharge/transfer location is appropriate.

The appeal is DENIED, the Facility is authorized to discharge the Appellant home on or after [REDACTED], 2025 upon Agency confirmation that it is able to accommodate the Appellant's request and that the aides are available to provide care to Appellant six hours a day seven days a week.

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: Albany, New York
January 9, 2025



Kimberly A. O'Brien
Administrative Law Judge