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**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

January 9, 2025

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o The Riverside Premier Rehabilitation
and Healing Center
150 Riverside Drive
New York, New York 10024

Allison Bellin, DSW
The Riverside Premier Rehabilitation
and Healing Center
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: nm
Enclosure

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

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



Appellant,

from a determination by

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

Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION

#DA24-6497

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: Webex videoconference


Hearing Date: January 8, 2025

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


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

 (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
Leah Creash, Director of Rehabilitation Services
Wendy Xia, Registered Nurse, Unit Manager

Facility exhibits: 1 – Progress note by Dr. Asani Phillips dated [REDACTED] 24
2 – Progress note by Dr. Jared Tannenbaum dated [REDACTED] 25
3 – Physical therapy recertification, progress report, and updated therapy plan dated [REDACTED] 25
4 – Occupational therapy discharge summary dated [REDACTED] 24
5 – Discharge notice dated [REDACTED] 24
6 – Admission record

Appellant witnesses: [REDACTED] Appellant

Appellant exhibits: None

A digital recording of the hearing was made (39:58 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] 2024 for short-term rehabilitation after [REDACTED]. She has been diagnosed with [REDACTED].

[REDACTED] (Exhibit 6.)

2. When using a walker, the Appellant is independently able to perform all activities of daily living (ADLs) other than showering, for which she requires setup assistance. She was

discharged from occupational therapy on [REDACTED] 2024, and attained her highest functional level for physical therapy by [REDACTED] 2024. (Exhibits 3, 4.)

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 the apartment she maintains. (Exhibit 5.)

4. The Appellant's record contains complete documentation by her physician, Dr. Asani Phillips, which describes the Appellant's current health conditions and confirms that the Appellant can be safely discharged home. (Exhibit 1.)

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 admitted to the Facility for short-term rehabilitation on [REDACTED] 2024 post-hospitalization. (Exhibit 6.) 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 5.) 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 while the Appellant previously required maximal assistance with ADLs, she is now completely independent in performing those same tasks, the only exception being showering, for which she requires setup assistance. (Recording @ 8:53.) The Appellant has met all functional

physical and occupational therapy goals, and has also attained her highest practical functional level. (Exhibits 3, 4.)

Nurse manager Wendy Xia supervises the Appellant's unit at the Facility. Although she confirmed the Appellant's need for setup help with [REDACTED] and [REDACTED], Ms. Xia also confirmed that the Appellant does not receive, and is not in need of, nursing services or other services uniquely provided by a nursing home. (Recording @ 13:50.)

The Appellant asserted that she needs more time at the Facility to achieve greater physical independence before being discharged. She testified that she has limited use of her [REDACTED] and [REDACTED] and must resort to using her [REDACTED] when eating. (Recording @ 14:23, 18:53, 24:35.) The Appellant also contended that she requires cleanup help after [REDACTED] in contrast with the Facility's documentation which describes her as completely independent with [REDACTED]. (Recording @ 12:19, 33:45.)

The Appellant's described needs involve minimal ADL assistance, rather than nursing home care. 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 her apartment. (Exhibit 5.) Although the Appellant previously advised Facility staff that she wanted to return home, after receiving the [REDACTED] 2024 discharge notice, the Appellant requested placement at an assisted living facility. However, she rejected four available facilities for reasons ranging from the [REDACTED] to her personal financial responsibility for covering a portion of the cost of her stay. (Recording @ 6:25, 16:47, 32:03.)

The Appellant conceded that she can ambulate "short distances" with a walker, but contended that she is unable to navigate her apartment using a walker because the door to her

bathroom [REDACTED] (Recording @ 19:26, 22:21.) Ms. Creash testified that the Appellant routinely uses her walker to successfully navigate her very small room at the Facility, which she shares with another resident, including access to the shared bathroom which also opens outward. (Recording @ 23:28.)


The Appellant also expressed concern for her ability to leave her apartment, as she would need a wheelchair outside, and she cannot self-propel. (Recording @ 36:20.) Since her admission to the Facility, the Appellant has been visited by a private home health aide four hours per day, who pushes her wheelchair when the Appellant ventures outside. (Recording @ 6:54.) Although the Appellant expressed doubts that the same aide would remain under her employ if she is discharged, the Appellant confirmed that she would enlist another private aide to assist her. (Recording @ 18:24.) The Facility would also send home care referrals on the Appellant's behalf to her managed long-term care plan and a certified home health agency (CHHA) to ensure that the Appellant obtains any and all necessary ADL assistance. (Recording @ 7:22, 26:15.)

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 discharge as it is not alleging danger. Public Health Law § 2803-z(c). While the Appellant's concerns appear to stem largely from her fear of being unsupervised in her apartment, 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 [REDACTED] 2024, on or after [REDACTED] 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 9, 2025
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge