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**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

February 7, 2025

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Bronx Center
1010 Underhill Avenue
Bronx, New York 10472

Yvelisse Aybar, MSW
Bronx Center
1010 Underhill Avenue
Bronx, New York 10472

[REDACTED]

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 / cmj

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

**Bronx Center for Rehabilitation
and Health Care,**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION

#DA25-6517

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: Webex videoconference

Hearing Date: February 3, 2025
The record closed February 6, 2025

Parties: Bronx Center for Rehabilitation and Health Care
1010 Underhill Avenue
Bronx, New York 10472
By: Yvelisse Aybar, MSW

By: [REDACTED] Power of Attorney
[REDACTED]

JURISDICTION

Bronx Center for Rehabilitation and Health Care, 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 pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

Facility witnesses: Yvelisse Aybar, Social Worker
Narine Salomone, Director of Nursing

Facility exhibits: 1 – Admission record
2 – Discharge notice dated ██████/25
3 – Letter by Dr. George Koshy dated ██████/25
4 – Letter by Yvelisse Aybar dated ██████/25
5 – Task list report
6 – Order summary report
7 – Occupational therapy evaluation and plan of treatment
8 – Social service and documentation dated ██████/25
9 – Psychiatric consultation progress note dated ██████/25

Appellant witnesses: ██████████ Appellant’s ██████ and power of attorney

Appellant exhibits: A – Clinton Management letter to ██████ dated ██████/25

A digital recording of the hearing was made in two separate recordings (file 1 totals 1:25:52 in duration; and file 2 totals 41:25 in duration). The hearing notice and accompanying cover letter were placed in the hearing record as ALJ Exhibit I.

ISSUES

Has Bronx Center for Rehabilitation and Health Care established its stated basis for discharging the Appellant?

If so, has Bronx Center for Rehabilitation and Health Care established that its proposed discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a ██████-year-old male who was transferred from ██████████ Hospital to Bronx Center for Rehabilitation and Health Care (Facility) on ██████, 2021 for rehabilitation after he suffered a ██████. He has been diagnosed with ██████████ with ██████████,

history of ██████████, and a history of ██████████. (Exhibit 1; Recording @ 13:09.)

2. The Appellant completed physical, occupational, and speech therapy on ██████████, 2021 after reaching his maximum functional abilities. He is independent with all activities of daily living (ADLs) but requires supervision or touching assistance for ██████████ and shower/tub transfers. (Exhibits 4, 5.)

3. By notice dated ██████████ 2025, the Facility advised the Appellant of its determination to discharge him on ██████████ 2025 because his health has improved sufficiently so that he no longer requires the services provided by the Facility. The notice advised the Appellant that he would be discharged to his apartment. (Exhibit 2.)

4. The Appellant’s record contains complete documentation made by his physician, Dr. George Koshy, which describes the Appellant’s current health conditions, and confirms that the Appellant no longer requires the services of a nursing home and can be safely discharged to the community. (Exhibit 3.)

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

Dr. George Koshy has confirmed in writing that the Appellant's medical conditions are stable and that he has significantly improved since admission. (Exhibit 3.) The Appellant completed all therapies in ██████████ 2021. During an evaluation for occupational therapy on ██████████

[REDACTED] 2025, the Appellant was still determined to have maintained his maximal functional abilities and thus did not require further therapies. (Exhibit 7.)

Narine Salomone, the Facility's Director of Nursing, testified that the Appellant had received skilled nursing services upon admission and for several months thereafter, and required the assistance of another person to complete ADLs. However, Ms. Salomone confirmed that the Appellant made progress in therapy so that he is now functionally independent with the use of assistive devices, such as a rollator for walking and a sock stick to help put on his socks. While she acknowledged that the Appellant requires supervision when dressing and for personal hygiene, and requires medication for [REDACTED] control, Ms. Salomone confirmed that these services can be provided in the community with the appropriate referrals for home care and do not require his continued nursing home placement. (Recording @ 48:12.)

[REDACTED] the Appellant's [REDACTED] emphatically disagreed with the Facility's assessment of her [REDACTED] needs and abilities. Ms. [REDACTED] insisted that the Appellant cannot dress himself or perform other unspecified tasks without help from nursing home staff, but also stated that he was left to perform those tasks himself because nursing home staff were instructed not to help him. (Recording @ 19:49, 57:23.) Although the Appellant was observed several times ambulating and transferring himself from sitting to standing and vice versa during the hearing, Ms. [REDACTED] insisted that the Appellant was not sufficiently independent to be discharged. (Recording @ 1:07:26.) She contended that the Appellant's conditions necessitate constant supervision as provided in a nursing home setting. (Recording @ 11:30.) Ms. [REDACTED] asserted that the Appellant has had [REDACTED], even during his stay at the Facility, which might be fatal if he were discharged. (Recording @ 17:30.)

While Ms. Anderson's concerns are understandable, as she is speaking on behalf of a loved one, they do not refute the Facility's evidence that the Appellant's health has improved so that he no longer requires the services of a nursing home. The Facility has established the stated basis for discharge.

The Facility proposed to discharge the Appellant to his apartment operated by New York City Housing Authority (NYCHA). (Exhibit 2.) The Appellant would be discharged with referrals for home care services and an outpatient [REDACTED] treatment program; necessary durable medical equipment; and information regarding local [REDACTED] meetings and adult day care programs. (Exhibit 4.)

Ms. [REDACTED] contended that the Appellant's apartment is not habitable and will not be ready for safe living any time soon. (Recording @ 12:18, 20:13.) Facility Social Worker Yvelisse Aybar testified that she received verbal confirmation from an unnamed NYCHA employee that while the Appellant's apartment is currently undergoing needed repairs, they are expected to be completed by the effective date of discharge. (Recording @ 15:44.) Both parties were afforded until close of business on [REDACTED] to submit documentation substantiating their claims. (Recording @ 1:13:20, 1:16:56.)

On [REDACTED] Ms. [REDACTED] submitted a letter dated [REDACTED] from [REDACTED] Management, the entity overseeing the Appellant's apartment complex. The letter, sent directly to Ms. Aybar, confirms that no necessary repairs have been made to the Appellant's apartment, nor have they even commenced, because the management company is "in the process of contracting a contractor to assess" the Appellant's apartment. This letter further provides an estimated 90-day timeframe for completion of repairs once work gets underway. (Exhibit A.)

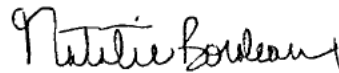
The Appellant's apartment is not currently habitable, nor will be it be habitable, by the effective date of discharge. The Facility has failed to establish that the proposed discharge plan is appropriate.

DECISION AND ORDER

Bronx Center for Rehabilitation and Health Care has established its stated basis for discharging the Appellant. However, it has failed to establish that its discharge plan is appropriate.

The Facility is not authorized to discharge the Appellant based on the ██████████ 2025 discharge notice.

Dated: February 6, 2025
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge

To:

Yvelisse Aybar, MSW
Bronx Center for Rehabilitation and Health Care
1010 Underhill Avenue
Bronx, New York 10472

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c/o Bronx Center for Rehabilitation and Health Care
1010 Underhill Avenue
Bronx, New York 10472

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