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**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

February 14, 2025

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Pine Forest Care Center for
Rehabilitation and Health
9 Hilaire Drive
Huntington, New York 11743

Bryan Rosenzweig, NHA
Forest Care Center for
Rehabilitation and Health
9 Hilaire Drive
Huntington, New York 11743

RE: In the Matter of ██████████ – 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

**Pine Forest Center for
Rehabilitation and Healthcare,**
Respondent,

to discharge her from a residential
health care facility.

COPY

**DECISION
AFTER HEARING**

#DA25-6520

Hearing before: Jeanne T. Arnold
 Administrative Law Judge

Held at: New York State Department of Health
 by videoconference
 February 12, 2025

Parties: Pine Forest Center for Rehabilitation and Healthcare
 9 Hilaire Drive
 Huntington, New York 11743
 By: Bryan Rosenzweig, Administrator

██████████
Pine Forest Center for Rehabilitation and Healthcare
Pro Se with support from:
Kathleen Bartley, Suffolk County Long Term Care
Ombudsman Program

JURISDICTION

Pine Forest Center for Rehabilitation and Healthcare (Facility), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge ██████████ (Appellant) from care and treatment in its nursing home.

5. The Appellant's physician and nurse practitioner at the Facility have determined and documented in the Appellant's clinical record that she is not in need of nursing home care and that discharge to a congregate care facility and/or to the community is medically appropriate. (Exhibits 3, 6.)

6. The discharge notice advised the Appellant she would be discharged to the ██████████ ██████████ New York. (Exhibit I.) Along with shelter placement and services provided by the Family Service League, the Facility's discharge plan also includes social work assistance for necessary referrals and scheduling with medical providers that the Appellant has not already arranged for herself, physical therapy, if needed, discharge medication and prescriptions sent to a community pharmacy, and continued referrals for housing with the ██████████ (██████████ (T Carpio, Rosenzweig.)

7. The Appellant remains at the Facility pending the outcome of this hearing.

ISSUES

Has the Facility established that the Appellant's discharge is authorized and that the discharge plan is appropriate?

APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, is a residential facility providing nursing care to sick, invalid, infirm, disabled or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital. PHL § 2801(2); 10 NYCRR 415.2(k). Transfer and discharge rights of nursing home residents have been codified in Public Health Law § 2803-z and set forth at 10 NYCRR 415.3(i) which provides, in pertinent part, that the facility shall:

- (1) (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.

...

- (ii) ensure complete documentation in the resident's clinical record when the facility transfers or discharges a resident under any of the circumstances specified in subparagraph (i) of this paragraph. The documentation shall be made by:

- (a) the resident's physician and, as appropriate, interdisciplinary team when transfer or discharge is necessary under subclause...(2) of clause (a) of subparagraph (i) of this paragraph

...

- (vi) 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 and provide a discharge summary pursuant to section 415.11(d) of this Title.

The Facility has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

The Facility has established, and it is uncontroverted, that the Appellant is not in need of nursing home care. This is the professional opinion of the Facility's care team, including the Appellant's treating nurse practitioner and the Facility's physician. (Exhibits 3, 6.) The Appellant is alert, cognitively intact and, in fact, attends college.

(Exhibit 2, 3, 6; T Appellant, Carpio, Rosenzweig.) She leaves the Facility on pass daily - - sometimes multiple times per day -- can self-administer her medications, ambulates independently, is independent with ADLs, and was discharged from both physical and occupational therapies in [REDACTED] 2024. (Exhibits 3, 4, 6; T Dunlap.) Her treating nurse practitioner, and the Facility's physician and interdisciplinary team have collaborated and have evaluated the Appellant and documented in the Facility record, in compliance with 10 NYCRR 415.3(i)(1)(ii)(a), that she does not need nursing home care, can return to the community and/or that congregate care is an appropriate discharge location. (Exhibits 3, 6; T Dunlap.) The Appellant presented no evidence that she requires nursing home care, nor does she even claim that she does require it. While the Appellant indicated that she is under the care of an [REDACTED] and may require outpatient surgery for her [REDACTED] and that she has [REDACTED] (Exhibit A) that is exacerbated by change and the unknown, even she testified that she is "ready to go." Appropriate grounds for discharge have been established.

A nursing home must permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(i)(1)(vii). The Facility has complied with this regulation by making extensive efforts to include the Appellant in discharge planning and to provide options for her. Social Worker Carpio detailed that she has been working on discharge planning with the Appellant since [REDACTED] 2023 and made referrals to at least three Assisted Living Facilities located on [REDACTED], including in [REDACTED] and [REDACTED] but that the Appellant refused to live anywhere other than the [REDACTED]. The Appellant continues working independently and with [REDACTED] to locate her

own housing. (T Appellant, Carpio.) Other options have included renting a room in [REDACTED] and the Appellant is on a waiting list for a housing village in [REDACTED] (T Appellant, Carpio), however, neither of these are currently available to the Appellant and it is unknown if or when they will become available. The Appellant said she prefers to stay in [REDACTED] because she wants to be near her [REDACTED]. Her only other family is her [REDACTED] who resides in [REDACTED] but he wants her to complete college before she travels abroad to live with him. (T Appellant.) The Appellant has not developed a feasible plan of her own.

The Appellant is entitled to an appropriate discharge plan that meets her medical needs. She is not entitled to remain in nursing home care that she does not need unless and until she is offered her preference in housing arrangements. The Facility has established that it made its best efforts, in accordance with PHL § 2803-z(1)(b), to find housing other than temporary housing, and it did secure several appropriate housing options, but the Appellant has refused them all. The Facility referred the Appellant to [REDACTED] and the Appellant would have been accepted for temporary housing placement except that she refused to sign the application. (Exhibit 5.) Given the Appellant's refusal to participate in realistic discharge planning or accept any of the offered alternatives, discharge to the Family Service League is a safe and appropriate plan.

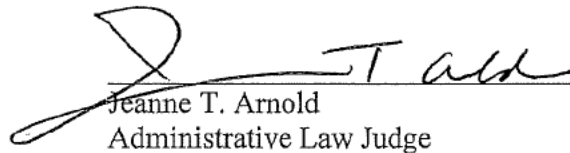
The Appellant has health care providers already in place. (T Appellant, Dunlap.) Prescriptions for medications will be provided, as well as transitional care appointments and referrals, if necessary. [REDACTED] and members of the Facility itself remain available to

assist the Appellant with finding alternative living arrangements if she is willing to cooperate and accept their assistance. (T Carpio, Dunlap, Rosenzweig.)

Under these circumstances, the Facility's discharge plan is appropriate, and the Facility is entitled to proceed with it.

DECISION: The Pine Forest Center for Rehabilitation and Healthcare has established valid grounds for the discharge of Appellant ██████████ ██████████ and has established that its discharge plan is appropriate. The Facility is authorized to discharge the Appellant in accordance with its discharge notice dated ██████████ 2025.

Dated: Rochester, New York
February 14, 2025


Jeanne T. Arnold
Administrative Law Judge

To:

Bryan Rosenzweig, Administrator
Pine Forest Center for Rehabilitation and Healthcare
9 Hilaire Drive
Huntington, New York 11743
admin@pfcnh.com

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c/o Pine Forest Center for Rehabilitation and Healthcare
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