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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

March 21, 2025

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o NYU Langone Hospital
150 55th Street
Brooklyn, New York 11220

David Cytryn, Administrator
West Lawrence Care Center
1410 Seagirt Blvd.
Far Rockaway, New York 11691

Sabrina Weiss, SW
NYU Langone Hospital
150 55th Street
Brooklyn, New York 11220

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
West Lawrence Care Center

Respondent,

to discharge him from a residential health care facility

COPY

DECISION

Hearing Before: Jean T. Carney
Administrative Law Judge (ALJ)

Held via: Cisco WebEx videoconference

Hearing Date: March 20, 2025

Parties: West Lawrence Care Center, Respondent
By: David Cytryn, Administrator
dcytryn@westlawrence.com

[REDACTED] *Pro se*, Appellant

NYU Langone Hospital, Interested Party
By: Sabrina Weiss, SW
Sabrina.weiss@nyulangone.org

JURISDICTION

Pursuant to Public Health Law §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("10 NYCRR") § 415.2(k), West Lawrence Care Center (Respondent or Facility) is a residential health care facility/nursing home 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.

Resident rights are set forth at 10 NYCRR § 415.3, *inter alia*, it provides that before a facility discharges a resident it shall notify the resident and/or their representative of the transfer/discharge and its reasons in writing and in a language and manner the resident can understand and must be provided before transfer/discharge; state the reason the transfer/discharge is necessary; and have a discharge plan including identifying a discharge location that is available and appropriate to meet the resident's needs. A resident who believes the facility has erroneously determined that the transfer/discharge is necessary has the right to an administrative hearing. The facility has the burden of proving that the transfer/discharge is necessary and the discharge plan is appropriate.

HEARING RECORD

In support of its determination, the facility presented documents (Exhibit 1, 22 pages); the testimony of Precious Bamawo, Director of Nursing (DON); Melissa Policastro, Director of Social Work; and Sabrina Weiss, Social Worker at NYU Langone hospital. The Appellant testified in his own behalf and presented no documentary evidence. The Notice of Hearing with Discharge Notice was admitted as ALJ Exhibit I; the hearing was digitally recorded and made part of the record.

ISSUES

Has the facility established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refers to the testimony of the witness ("T") at the hearing and exhibits ("Exh") found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejected in favor of the cited evidence. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The resident is a [REDACTED]-year-old male who was initially admitted to the facility on [REDACTED] 2023 from [REDACTED] – [REDACTED] with relevant diagnoses of [REDACTED] [REDACTED]. (Exh 1 p. 5).

2. On [REDACTED], 2025, the facility issued a Notice of Discharge/Transfer, transferring the resident to [REDACTED] for a [REDACTED] evaluation after [REDACTED] staff and attempting to elope. (ALJ I).

3. [REDACTED] conducted an evaluation that morning and cleared the resident to return to the facility; but was informed by a physician at NYU Langone Hospital (Langone) that the resident had been scheduled for "significant surgery planned months in advance involving multiple departments and that he was keeping the OR open" for the resident. [REDACTED] instructed the resident's [REDACTED] to take the resident to Langone for his surgical procedure. (Exh 1 p. 21).

4. The resident has remained at Langone since his surgery. Langone has cleared the resident for discharge to the facility, indicating that he requires skilled nursing care. The facility has refused to re-admit the Resident. (Exh 1; T Ms. Weiss; Ms. Bamawo).

APPLICABLE LAW

A residential health care facility, also referred to 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] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(1)(i)(a), a resident may only be discharged when the interdisciplinary care team determines that:

- (1) the transfer of discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;
- (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;
- (3) the safety of individuals in the facility is endangered; or
- (4) the health of individuals in the facility is endangered.

Additionally, 10 NYCRR § 415(i)(1)(ii) requires that the facility ensures complete documentation in the resident's clinical record when transferring or discharging a resident under the above circumstances. The documentation shall be made by:

- (a) the resident's physician and, as appropriate, interdisciplinary care team, when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; and
- (b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph.

Before it transfers or discharges a resident, the facility must notify the resident of the transfer or discharge, and record the reasons in the clinical record. (10 NYCRR § 415.3[i][1][iii]). The written notice must include the reason for the transfer or discharge, the specific regulations that support the action, the effective date of the transfer and the location to which the resident will be discharged. (10 NYCRR § 415.3[i][1][v]).

The burden is on the facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision. (*Stoker v. Tarantino*, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3rd Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

DISCUSSION

The facility failed to show that the discharge is necessary and it failed to present an appropriate discharge plan. It is well settled that a hospital is not an appropriate discharge location. (Dear Administrator Letter (DAL) 19-07, reissued October 11, 2022). The facility argues that [REDACTED] discharged the resident to his [REDACTED] thereby absolving the facility of any responsibility for the resident. This argument is disingenuous at best. [REDACTED] records clearly state that the resident would be discharged to the facility. The resident's [REDACTED] merely transported the resident to Langone for surgery, not as a permanent discharge location.

The facility also argues that the resident should not be re-admitted because the safety of individuals in the facility is endangered due to his behaviors. When alleging a resident's discharge is necessary due to endangering the safety of others, the facility must show complete documentation in the resident's medical record detailing factual support for the allegation. (10 NYCRR § 415.3[i][1][iii]). The facility failed to submit any such documentation. The facility also failed to issue a proper discharge notice, alleging these grounds. The evidence reflects that the resident was "calm, cooperative, guarded at times, Irritable at other times, well-groomed, had linear thought process, and was in good behavior control." (Exh 1, p. 12). Ms. Weiss testified that the resident needs assistance when he gets frustrated, and that he is cooperative and directable. It is also noted that the

facility was aware of the resident's mental health diagnoses when he was admitted, and determined it could care for him. Therefore, the facility's argument holds little weight.

Finally, the facility argues that at the time the resident was discharged for an evaluation, his health had improved sufficiently that he no longer needed skilled nursing services. This argument is belied by Ms. Policastro's testimony that it was the intent of the facility to re-admit the resident once he was cleared for discharge by [REDACTED]. In any event, the evidence demonstrates that the resident currently needs skilled nursing care.

ORDER

West Lawrence Care Center has failed to establish that the Appellant's discharge is necessary, and that the discharge plan was appropriate.

1. Pursuant to 10 NYCRR § 415.3(i)(2)(i)(d), the facility is Ordered to re-admit the Resident to the first available bed.
2. 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
March 21, 2025


JEAN T. CARNEY
Administrative Law Judge

TO: David Cytryn, Administrator
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