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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

April 9, 2025

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Hopkins Center
155 Dean Street
Brooklyn, New York 11217

[REDACTED]
Daiva Brito, DSW
Hopkins Center
155 Dean Street
Brooklyn, New York 11217

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

COPY

DECISION

[REDACTED]
Appellant,

from a determination by

Hopkins Center

to discharge them from a residential health care facility.

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

Held at : Videoconference via Webex

Dates : April 2, 2025

Parties : [REDACTED]
Co Hopkins Center
155 Dean Street
Brooklyn, New York 11217
By: [REDACTED]

Daiva Brito, DSW
Hopkins Center
155 Dean Street
Brooklyn, New York 11217
dbrito@hopkinscenter.com

On [REDACTED] 2025, Hopkins Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), issued a Discharge Notice stating it determined to discharge resident [REDACTED] (Appellant) from the Facility. 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 three exhibits: ALJ Exhibit 1-*Notice of Hearing with [REDACTED] 2025, Discharge Notice*; ALJ Exhibit 2 - *Admission Face Sheet & [REDACTED] 2025 Progress Note by Imade Perlman M.D.*; ALJ Exhibit 3- *[REDACTED] 2025 Progress Note by Imade Perlman M.D.* The Facility presented two witnesses: Daiva Brito, DSW, and Imade Perlman MD. [REDACTED], Appellant's [REDACTED] testified and acted as the Appellant's representative, and the Appellant testified on his own behalf. A digital recording was made of the proceeding.

FINDINGS OF FACT

1. The Appellant is an [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2024, from the hospital with [REDACTED]. His diagnoses include [REDACTED], [REDACTED]. ALJ Exhibit (Ex.) 1 & ALJ Ex. 2.

2. The Appellant is independent with all activities of daily living (ADLs) including dressing, grooming, bathing, toileting, and transfers. The Appellant ambulates with the assistance of a [REDACTED]. Testimony (T.) Brito, Perlman.

3. The discharge notice issued on [REDACTED] 2025 (Discharge Notice) states that the Appellant's health has improved sufficiently such that the Appellant no longer requires the services of the Facility. The proposed discharge is to an assisted living facility (ALF), [REDACTED] [REDACTED], New York ([REDACTED] ALF). ALJ Ex. 1.

4. The Appellant timely appealed the Facility's discharge determination and proposed discharge location. 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 correct 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, rehabilitative, 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." Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii)(b), the Facility bears the burden to prove a discharge is necessary and the discharge plan is appropriate.

DISCUSSION

The Facility's discharge notice states that the Appellant's health has improved, and he no longer requires the services it provides, and that he be discharged to [REDACTED] ALF. Dr. Perlman testified that the Appellant is clinically stable. He ambulates with a walker and is independent with his ADLs. Dr. Perlman does not need to evaluate him on a daily basis, but often sees him around the Facility, and observes that he is independent and quite social. He requires minimal assistance, and his needs can be met by [REDACTED] ALF. His [REDACTED] conditions can be managed in the community.

Ms. Brito testified that the Appellant lacks housing and it was difficult to find housing in the community because his Net Available Monthly Income (NAMI) is going to the Facility. The Appellant requested that the Facility attempt to find him an ALF placement. The Facility found him a placement at [REDACTED] ALF and Ms. Brito believes it is a good fit. The ALF offers recreational activities and opportunities to socialize and is the least restrictive environment for the Appellant. The Appellant now does not want to go to the ALF because he believes he will not be able to access medical care. The Appellant does not receive nursing services at the Facility other than medication administration, which he will receive at the ALF. The Appellant has a follow-up appointment with his [REDACTED] in the community at the end of [REDACTED] and the ALF will assist him with getting to the appointment.

[REDACTED] testified that she just recently noticed that her [REDACTED] is experiencing [REDACTED] when he is talking with her on the phone. She told her [REDACTED] to let his care givers know about what he is experiencing. She believes that the Appellant needs the care the Facility provides and is concerned that the ALF cannot meet his needs.

The Appellant testified that he is not ready to leave the Facility. He said he feels [REDACTED] and is afraid he is going to fall. He likes his nurses and has made friends, and he receives good care at the Facility. The Appellant believes that the ALF cannot provide him with the care he needs.

CONCLUSIONS

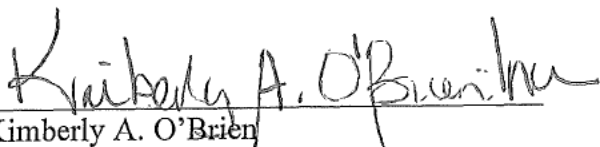
Admittedly the Appellant is comfortable with his caregivers and he has made friends, it is understandable that he does not want to leave the Facility. The ALJ noted Ms. [REDACTED] concern that her [REDACTED] condition might have changed in the days leading up to the hearing. On April 7, 2025, at the ALJ's request, Dr. Perlman examined the Appellant and confirmed that his condition remains stable, he is in no acute distress, his [REDACTED] conditions are well controlled, and transfer to the ALF is appropriate. ALJ Ex. 3. The Facility has shown that the Appellant's health has improved sufficiently such that he no longer needs the services it provides and the proposed discharge to [REDACTED] ALF is available and appropriate to meet his needs.

DECISION

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

1. The appeal is DENIED, the Facility is authorized to discharge the Appellant pursuant to the Discharge Notice.
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
April 9, 2025


Kimberly A. O'Brien
Administrative Law Judge