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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

April 15, 2025

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Hillside Manor Rehab and Extended
Care Center
182 15 Hillside Avenue
Jamaica East, New York 11432

Jamie Green, DSW
Hillside Manor Rehab and Extended
Care Center
182 15 Hillside Avenue
Jamaica East, New York 11432

Lourdes Martinez, Esq.
Sheppard Mullin
30 Rockefeller Plaza
New York, New York 10112

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

Hillside Manor Rehabilitation and Extended Care Center

to discharge them from a residential health care facility.

DECISION

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

Held at : Videoconference via Webex

Dates : April 9, 2025

Parties : [REDACTED]
Hillside Manor Rehabilitation and Extended Care Center
182 15 Hillside Avenue
Jamaica Estates, New York 11432
[REDACTED] Appellant's [REDACTED] Representative/Assistant

Jaime Green, DSW
Hillside Manor Rehabilitation and Extended Care Center
182 15 Hillside Avenue
Jamaica Estates, New York 11432
jaimie.green@hillssidem.com

By Lourdes Martinez, Esq.
Sheppard Mullin
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INTRODUCTION

On [REDACTED] 2025, Hillside Manor Rehabilitation and Extended Care 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 scheduled for March 26, 2025. The Appellant requested an adjournment to obtain counsel. The Facility did not object to a brief adjournment. The hearing was adjourned to April 9, 2025. At the hearing, the Appellant requested another adjournment to obtain counsel. The Facility opposed the second adjournment request stating that the Appellant has been aware of the Facility's intention to discharge him since [REDACTED], 2024, when it issued the first discharge notice. While the Appellant did not appeal the first discharge, he refused to leave the Facility. The second discharge notice issued on [REDACTED] 2025, is the subject of this proceeding. The ALJ determined that Appellant had known for quite some time that the Facility intended to discharge him, and he had been granted an adjournment to retain counsel. Based on the foregoing the ALJ denied the Appellant's second adjournment request.

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: Facility Exhibit B - *Email From Gayathri Hariharan, Administrator, to Bari Goltzman, Ombudsman*; Facility Exhibit

C- Admission Face Sheet, Progress Notes & Brief Interview of Mental Status; and ALJ Exhibit 1- Notice of Hearing with [REDACTED] 2025, Discharge Notice & Reschedule Letter. The Facility presented two witnesses: Himanshu Pandya, MD, and Jaime Green, DSW. [REDACTED] Appellant testified with the assistance of [REDACTED] Appellant's [REDACTED] who functioned as Appellant's representative and also provided testimony. A digital recording of the proceeding was made.

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2024 from the hospital. He received wound care and treatment for an [REDACTED] and [REDACTED]. He also received physical therapy and occupational therapy (PT & OT.) Exhibit (Ex.) C.

2. The Appellant is independent with decision making and all activities of daily living (ADLs) including feeding, dressing, grooming, bathing, toileting, and transfers. The Appellant can apply a compression bandage on his [REDACTED] and self-administer his medications. He ambulates without use of an assistive device and can navigate stairs. Ex. C ; Testimony (T.) Pandya, Green.

3. The discharge notice issued on [REDACTED] 2025 (Discharge Notice) states that the Appellant's health has improved sufficiently such that he no longer requires the services of the Facility. The proposed discharge is to a room he rents in the community (home.) ALJ Ex. 1; T. Pandya, Green.

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 his home in the community. Dr. Pandya testified the Appellant was treated for an [REDACTED] and [REDACTED] and he received PT and OT, which he was discharged from in [REDACTED] 2024. The Appellant had an [REDACTED] but it was discontinued and he now wears a [REDACTED] wrapped from his [REDACTED].

In anticipation of the Appellant's discharge, Dr. Pandya ordered consultations with a [REDACTED] physician and a [REDACTED]. The consulting physicians confirmed that the Appellant no longer requires an [REDACTED] and he should continue to use a [REDACTED]. Ex. C at pages 5-6. Dr. Pandya last examined the Appellant on [REDACTED] 2025, and reviewed his medical record and found that he is clinically stable. The Appellant is independent with decision making and independent with his ADLs. He can administer his own medications and apply the [REDACTED] [REDACTED] without assistance. The Appellant ambulates without use of an assistive device and can navigate stairs and his [REDACTED] conditions can be managed in the community. Discharge to his home is appropriate.

Ms. Green testified that the Appellant does not receive nursing services at the Facility. The Appellant has a private room at the Facility and he keeps the door closed and refuses to allow staff to enter. A nurse brings the Appellant's medications to his door and his meal trays are also brought to his door. When he is finished with a meal, he brings the tray to the nurses station so that staff will not enter his room to take it away. On [REDACTED] [REDACTED] the Appellant confirmed that his home in the community is available. Ms. Green asked the Appellant for the landlord's name and contact information so that she could reach out and coordinate the discharge, but the Appellant refused to provide it. Ms. Green advised the Appellant that the Facility will make a homecare agency referral. The referral is made for all residents upon discharge. The homecare agency will independently decide if the Appellant requires any homecare services.

At the outset of the hearing, Mr. [REDACTED] said that the Appellant was having a problem with his [REDACTED] and that he would speak for him. Throughout the hearing the Appellant was

writing notes to Mr. [REDACTED] and speaking quietly to only him.¹ When it was time for the Appellant to make a statement about why he wished to remain at the Facility, Mr. [REDACTED] read from the Appellant's notes and repeated for the record what the Appellant told him. The Appellant is upset about the care he has received at the Facility. The Appellant contends that he needs to remain at the Facility to receive [REDACTED] therapy and medications that have been discontinued. He also contends that he requires an [REDACTED]. Mr. [REDACTED] said that the Appellant's landlord will not let people from the home healthcare agency enter the home.

CONCLUSIONS

Dr. Pandya examined the Appellant and reviewed his medical record just days before the hearing and confirmed that he is clinically stable and does not require the services the Facility provides. Dr. Pandya and two consulting physicians confirmed that the Appellant does not require an [REDACTED] and that he should continue to use a [REDACTED], which he can apply on his own. The Appellant receives no nursing services at the Facility. He is independent with decision making and his ADLs and can ambulate without using an assistive device and can self-administer his medications and [REDACTED]. His [REDACTED] conditions can be managed in the community. The Appellant confirmed that his home was available but he refused to provide his landlord's name and contact information so that Ms. Green could coordinate the discharge.

¹ Mr. [REDACTED] attempted to read a prepared statement (statement) highlighting the Appellant's displeasure with the care he received from specific providers at the Facility and threatening to take legal action against them. The ALJ repeatedly explained that the purpose of the hearing was to determine whether the discharge is necessary and the discharge home is appropriate. After the hearing concluded and the participants were signing out of the Webex hearing, Mr. [REDACTED] asked the ALJ to admit the statement and photographs of the Appellant's [REDACTED]. Mr. [REDACTED] and the Appellant were given an opportunity to testify, about why the Appellant wishes to remain at the Facility, which they did. Mr. [REDACTED] was given an opportunity to ask questions of Dr. Pandya, he did not do that, and he did not show Dr. Pandya the photographs. The ALJ is not a medical professional and cannot use the photographs to assess the condition of the Appellant's [REDACTED]. Based on the foregoing, the ALJ denied the request.

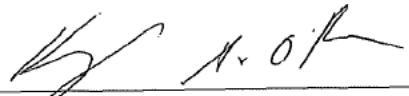
The homecare agency referral is made upon discharge for every resident. There is little in the record to support that the Appellant would require homecare services upon discharge, and nothing in the record to support Mr. [REDACTED] contention that the landlord would not allow a homecare agency provider to enter the home. 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 the community is appropriate.

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 14, 2025



Kimberly A. O'Brien
Administrative Law Judge