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NEW YORK STATE | Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

April 2, 2025

CERTIFIED MAIL/RETURN RECEIPT

[redacted]
c/o Fieldston Lodge Care Center
666 Kappock Street
Bronx, New York 10463

Jennifer Oliveras
Fieldston Lodge Care Center
666 Kappock Street
Bronx, New York 10463

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

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

Fieldston Lodge Care Center

Respondent,

to discharge her from a residential health care facility.

DECISION

#DA25-6549

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: Webex videoconference

Hearing Date: March 28, 2025
The record closed April 1, 2025

Parties: Fieldston Lodge Care Center
666 Kappock Street
Bronx, New York 10463
By: Jennifer Oliveras

[redacted]
Pro se

JURISDICTION

Fieldston Lodge Care Center, a residential health care facility subject to Article 28 of the New York Public Health Law and located in Bronx County, New York, determined to discharge [redacted] (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

Facility witnesses:	Jennifer Oliveras, Administration Kimberly Sam, Director of Social Work Peter Arenas, Director of Rehabilitation Marvin Salvatore, Nurse Manager Ella Iyaela, Assistant Director of Nursing
Facility exhibits:	2 – Discharge notice dated [redacted] 2025 3 – Face sheet and Minimum Data Set (MDS) Nursing Home Quarterly Version, Cognitive Patterns Assessment conducted [redacted], 2025 4 – Social work letter dated [redacted], 2025 5 – Physical therapy discharge summary 6 – Medical progress note dated [redacted], 2025 7 – Discharge summary and physician order dated [redacted]
Appellant witnesses:	[redacted], Appellant
Appellant exhibits:	A – Letter by Dr. [redacted] and letter by Dr. [redacted]
ALJ exhibits:	I – Hearing notice and accompanying cover letter II – Administrator letter dated [redacted] 2025 III – Physician progress note dated [redacted] 2025 IV – Physical therapy note dated [redacted], 2025 V – Nurse Practitioner progress notes VI – Interdisciplinary care team progress notes

A digital recording of the hearing was made (1:21:12 in duration).

ISSUES

Has Fieldston Lodge Care Center established that its determination to discharge the Appellant is authorized and that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a [redacted]-year-old female who was transferred from [redacted] Hospital to Fieldston Lodge Care Center (Facility) on [redacted], 2023 for rehabilitation after falling from her wheelchair and [redacted] She has been diagnosed with [redacted] resulting from [redacted]. (Exhibit 2; ALJ Exhibit III; Recording @ 9:49.)

2. The Appellant has completed prescribed occupational and physical therapies and is independently able to perform all activities of daily living (ADLs) with the use of assistive devices. (Exhibit 5; Recording @ 10:35.)

3. By notice dated [redacted], 2025, the Facility advised the Appellant that she would be discharged on [redacted], 2025 because her health has improved sufficiently so that she no longer requires the services provided by the facility and because the safety of individuals in the facility is endangered. The notice informed the Appellant that she would be discharged to her apartment in the [redacted] (Exhibit 2.)

4. The Appellant's record contains complete documentation made by the Facility's physician, Dr. Chaim Silberberg, and other members of her interdisciplinary care team, which identify the Appellant's current health conditions, including conditions which have improved.

Dr. Silberberg's documentation confirms that the Appellant no longer requires the services of a nursing home and can be safely discharged to her apartment. (Exhibits 3, 5-7; ALJ Exhibit III.)

5. The Appellant remains at the Facility pending the outcome of the hearing.

APPLICABLE LAW

A residential heath 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
> > > >
> > > > (3) the safety of individuals in the facility is endangered.

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). When the facility determines that a resident's transfer or discharge is warranted because the safety of individuals in the facility is endangered, the documentation in the resident's clinical record to support this basis for transfer or discharge must be made by a physician. 10 NYCRR § 415.3(i)(1)(ii)(b); *see also* 42 CFR § 483.15(c)(2)(ii)(B).

The facility must 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. 10 NYCRR 415.3(i)(1)(vi). The facility must also 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 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 the safety of individuals in the nursing home is endangered and also because the Appellant's health has improved sufficiently so that she no longer needs the services provided by the nursing home. (Exhibit 3.)

Endangerment of the Safety of Others

The Facility alleges that the Appellant is refusing treatment and self-medicating with medications she brings in from the community, alongside medications provided by nursing staff onsite. In support of this allegation, the Facility submitted nursing progress notes describing encounters with the Appellant and items discovered in her possession. (ALJ Exhibit V.)

As nursing staff are unaware of any other prescriptions that the Appellant has received in the community (other than when searching the Appellant's room), including their dosage and purpose, the Facility is concerned that the medications the Appellant receives in the community may cause allergies for other residents. Nurse Manager Marvin Salvatore testified that he found [redacted] in a [redacted], along with the Appellant's regular meted dose of [redacted] in the Appellant's room earlier in the week leading up to the hearing. (Recording @ 23:44.) However, the Facility failed to submit documentation made by a physician to substantiate the danger that Appellant to the safety of others. This determination is therefore not sustained.

Appellant's Improved Condition

The Appellant's clinical record includes complete documentation made by a physician and other members of her interdisciplinary care 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). (Exhibits 2, 5; ALJ Exhibit III.)

The Appellant's medical conditions are stable, and she is not receiving any services uniquely provided by a nursing home. When the Appellant was admitted, she received physical and occupational therapies. The Appellant had already received weekly outpatient treatment at a [redacted] clinic before admission. The Facility continued to arrange her transportation to those appointments until last year when the Appellant decided she wanted to make those arrangements herself. (Recording @ 11:41.) The Appellant has now completed all therapies after attaining her maximum functional abilities but has resumed physical therapy for the limited purpose of enabling her to gain confidence when climbing stairs as part of discharge planning, discussed further below. (Recording @ 16:49.) The Appellant prefers to ambulate with a wheelchair, but

she can walk with a [redacted] and perform all transfers with supervision. (Exhibit 5; Recording @ 48:59, 1:10:30.)

The Appellant is seen by other physicians in the community and continues to participate in her outpatient [redacted] maintenance treatment program, from which the Facility retrieves her [redacted] on a weekly basis and distributes the prescribed dosage each day. (Recording @ 12:49.) The Appellant orders from Uber eats and routinely refuses meals offered by the Facility.

The Appellant tends to her own wounds, with the assistance of her [redacted] She has [redacted]. (Recording @ 23:07.) Although her interdisciplinary care team met with the Appellant and her [redacted] on several occasions to explain that nursing staff would like to assist the Appellant with treatment, those offers were repeatedly rebuffed. (Recording @ 15:08, 34:18, 36:10; ALJ Exhibit VI.)

At the hearing, the Appellant contended that she requires wound care at the Facility, but also conceded that staff lack the knowledge to assist with wound care. (Recording @ 31:51, 41:37, 42:42.) Paradoxically, the Appellant insisted that her [redacted] (with whom she would reside when discharged) knows how to change her wound dressings (also referred to as an [redacted] but the Facility recently prohibited him from entering the premises. (Recording @ 37:08, 42:08.) By letter dated [redacted], 2025, [redacted] surgeon [redacted]., explains that the Appellant needs her [redacted] wrapped twice a week, once weekly at [redacted] Hospital, and once weekly at the Facility. (Exhibit A.) The Appellant and her personal caregivers are able to perform wound care as needed.

The Appellant has also refused other treatment offered by the Facility, including [redacted] dietary services, weight monitoring, nursing, and physical therapy. On a few occasions, she has also refused to attend her community-based wound care appointments. (ALJ Exhibit VI.)

Despite all documented refusals, the Appellant's condition has improved sufficiently that she no longer requires the services of a nursing home. This determination is sustained.

Proposed Discharge Plan

The Facility proposes to discharge the Appellant to her [redacted]-floor apartment in the [redacted] which she shares with her [redacted] and/or her [redacted] as caregiver(s). (Recording @ 38:36.) Upon discharge, the Appellant would receive in-home nursing visits for wound care and other home care services if deemed necessary after a needs-based assessment in her apartment. (Recording @ 38:12.) She would continue to receive outpatient wound care and [redacted] from the same community-based providers she had seen prior to and during her admission.

The Appellant asserted that she cannot climb [redacted] steps to reach the [redacted] floor of her apartment because the building does not have an elevator. (Recording @ 43:51.) The Appellant submitted a [redacted], 2025 letter from Dr. [redacted] (her [redacted] surgeon) which asserts that the Appellant "requires a one floor apartment in a building with an elevator, given that she is wheelchair bound…She owns DME (eg [sic]: wheelchair, walker, medical bed)." (Exhibit A.) Despite describing the Appellant as wheelchair bound, Dr. Gunduz also mentions the Appellant's walker without further explanation. The letter, written over two months before this hearing and in furtherance of the Appellant's public housing application, explains that the Appellant "will be leaving the nursing rehabilitation center soon." Dr. Gunduz's letter does not discredit or refute the Facility's evidence.

Peter Arenas, the Facility's Director of Rehabilitation, confirmed that physical therapy staff are working to help the Appellant regain her confidence when climbing stairs. Although the Appellant can safely climb [redacted] steps by leaning on the handrail, using a [redacted] or with the

assistance of another person, the Appellant is afraid because she has chosen to ambulate with a wheelchair since her admission. (Recording @ 17:37, 45:04, 46:50, 48:42, 1:10:30.)

The Appellant insisted that she wants to leave the Facility but needs more time to regain her strength. (Recording @ 54:38.) However, the Facility's documentation shows that the Appellant has repeatedly refused strength building exercises to help her regain her confidence and improve her stair climbing, including the day of this hearing. (ALJ Exhibit IV.)

Despite repeated attempts by her interdisciplinary care team to engage the Appellant in discharge planning, the Appellant opted not to participate in those discussions. (ALJ Exhibit VI.) The Facility has provided sufficient preparation and orientation to ensure the Appellant's safe and orderly discharge. The proposed discharge plan addresses the Appellant's medical needs and how those needs will be met after discharge. 10 NYCRR § 415.3(i)(1)(vi). The record establishes that the proposed discharge plan is appropriate.

DECISION

Fieldston Lodge Care Center has established that its determination to discharge the Appellant is authorized and that its discharge plan is appropriate.

Dated: April 2, 2025
Menands, New York

Natalie J. Bordeaux
Administrative Law Judge

To:

Jennifer Oliveras
Fieldston Lodge Care Center
666 Kappock Street
Bronx, New York 10463

[redacted]
c/o Fieldston Lodge Care Center
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Bronx, New York 10463