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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

April 11, 2025

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Dr. Susan Smith McKinney
Nursing and Rehabilitation
594 Albany Avenue
Brooklyn, New York 11203

Sara Freizer
Dr. Susan Smith McKinney
Nursing and Rehabilitation
594 Albany Avenue
Brooklyn, New York 11203

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 /mj

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

Dr. Susan Smith McKinney
Nursing and Rehabilitation Center
Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION

#DA25-6552

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: Webex videoconference

Hearing Date: April 7, 2025
The record closed April 10, 2025

Parties: Dr. Susan Smith McKinney Nursing and Rehabilitation Center
594 Albany Avenue
Brooklyn, New York 11203
By: Sara Freizer, Director of Social Work

[REDACTED]
Pro se

JURISDICTION

Dr. Susan Smith McKinney Nursing and Rehabilitation Center, a residential health care facility subject to Article 28 of the New York Public Health Law and located in Brooklyn, New York, determined to discharge ██████████ (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:

Sara Freizer, Director of Social Work
Bibi Saffee-Razak, Social Worker
Margaden Orgela, Assistant Director of Nursing
Beena Alexander, M.D., Attending Physician

Facility exhibits:

1 – Nursing progress notes
2 – Minimum Data Set, Nursing Home Quarterly Version, Cognitive Patterns assessment conducted ██████████, 2025
3 – Discharge notice dated ██████████, 2025
4 – Social work progress notes
5 – Resident face sheet
6 – Physician progress note and interim medical visit
7 – Physical therapy discharge summary

Appellant witnesses:

██████████ Appellant

ALJ exhibits:

I – Hearing notice and accompanying cover letter
II – Physician progress note dated ██████████, 2025
III – Social work progress note dated ██████████, 2025

A digital recording of the hearing was made (1:15:05 in duration).

ISSUES

Has Dr. Susan Smith McKinney Nursing and Rehabilitation Center established that its determination to discharge the Appellant is authorized and that its discharge plan is appropriate?

1. The Appellant is a [REDACTED]-year-old female who was transferred from [REDACTED] Hospital to Dr. Susan Smith McKinney Nursing and Rehabilitation Center (Facility) on [REDACTED] 2023 for rehabilitation. She has been diagnosed with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Exhibits 5, 6.)

2. The Appellant has completed prescribed occupational and physical therapies after attaining her highest practical level. She is able to perform activities of daily living (ADLs) using assistive devices. (Exhibit 6; Recording @ 25:54.)

3. By notice dated [REDACTED], 2025, the Facility advised the Appellant that she would be discharged on [REDACTED], 2025 because her “health has been significantly stabilized” and she no longer needs the services of the Facility. The notice informed the Appellant that she would be discharged to her apartment in [REDACTED] (Exhibit 3.)

4. The Appellant's record contains complete documentation made by the Facility's physician, Dr. Beena Alexander, and other members of her interdisciplinary care team. Dr. Alexander's documentation confirms that the Appellant no longer requires the services of a nursing home and can be safely discharged to the community. (Exhibits 1, 6, 7.)

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

APPLICABLE LAW

A residential health 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

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).

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 her “health has been significantly stabilized” so that she no longer needs the services provided by the nursing home. (Exhibit 3.)

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 1, 6, 7.) The Appellant’s medical conditions are stable, and she is not receiving any services uniquely provided by a nursing home. (Recording @ 27:31.) When the Appellant was admitted to the Facility, she received physical and occupational therapies to improve her overall functional abilities, including mobility, with the goal of having her return to the community. (Recording @ 25:37.) She was discharged from those therapies after attaining her highest functional level. Currently, the Appellant is able to perform all ADLs using assistive devices. (Exhibit 7.) The Appellant receives medical care from physicians in the community. (Recording @ 1:02:10.)

At the hearing, the Appellant contended that she would like to remain in the Facility until she recovers from a yet-unscheduled ██████ surgery. (Recording @ 2:59, 38:54.) Because the Appellant stated she had an appointment with her ██████ surgeon on ██████ 2025 (█████ days after the hearing was held), the hearing record was left open until April 10 to afford the Appellant an additional opportunity to submit medical documentation substantiating her medical

needs and the status of her [REDACTED] surgery. (Recording @ 38:27, 1:09:22.) As of the closing of this hearing record, the Appellant's [REDACTED] surgery had not yet been scheduled. (ALJ Exhibit II.) The Appellant has no need for any services uniquely provided by a nursing home.

The Facility has established that the Appellant's health has improved sufficiently so that she no longer requires the services provided by the Facility.

Proposed Discharge Plan

The Facility proposes to discharge the Appellant to her newly-leased apartment operated by [REDACTED]. (Recording @ 28:43.) The Appellant acknowledged that she signed the apartment lease and accepted the keys but asserted that she did so before learning that she needs [REDACTED] surgery. (Recording @ 36:15, 36:52.) She does not want to be discharged to the community until she fully recovers from [REDACTED] surgery because rehabilitative therapies are readily available in the Facility. (Recording @ 38:54.) As discussed above, the Appellant's [REDACTED] surgery has not been scheduled. (ALJ Exhibit II.)

Recovery from surgery is unpredictable. If post-surgery rehabilitation is necessary, the Appellant would be eligible for required therapies as an outpatient or, depending on the extent of her rehabilitation needs, a short-term inpatient admission for rehabilitation. (Recording @ 42:19.) As of the date of this decision, the Appellant does not require services provided by a nursing home and is independently able to care for herself. An apartment in the community is appropriate and preferable to remaining in a nursing home with limited opportunities for independence. (Recording @ 43:21.)

The Appellant contended that her apartment's location is problematic because it is too far from her physicians in the community, whose offices are in [REDACTED] (Recording @ 35:00,

1:00:58.) Upon discharge, the Appellant may arrange for medical transportation through her Managed Long-Term Care plan. She will also be evaluated for home-based physical and occupational therapies. (Recording @ 44:34.)

The Appellant also asserted that she has a “fraud problem,” and claimed that money was withdrawn from her bank account beginning in 2022 (at least one year before her admission to the Facility) and continuing today. The Appellant insisted that she only discovered the mysterious withdrawals when Facility social worker Bibi Saffee-Razak helped her obtain bank statements for her housing application. (Recording @ 46:05, 48:20.)

Money was removed before the Appellant’s admission at the Facility, and continues to be withdrawn, but the Appellant is still receiving her Social Security checks. (Recording @ 49:35.) When Ms. Saffee-Razak helped the Appellant contact her bank to inquire about the suspicious withdrawals, the Appellant’s original bank account was closed, and a new one was opened in her name. (Recording @ 50:33.) However, the Appellant contended that money was also being withdrawn suspiciously from her new bank account, prompting her to freeze the new bank account, too. (Recording @ 51:27.) Since the hearing record was already kept open until April 10 to afford the Appellant more time to submit information regarding her medical needs, the Facility was instructed to assist the Appellant with verifying whether she was able to access funds necessary to pay rent from any bank account. (Recording @ 1:08:44.)

After the hearing, the Appellant informed Ms. Saffee-Razak that she would return to the bank the following day (April 8) and declined Ms. Saffee-Razak’s offer to accompany her. Instead, the Appellant was accompanied by a family member. The Appellant returned from the bank without a letter or other documentation regarding the status of her bank account and did not

permit Ms. Saffee-Razak to contact the bank with her to obtain additional information. (ALJ Exhibit III.)

The Appellant was advised directly by this Administrative Law Judge to provide documentation to substantiate her claim that she could not access the funds in her bank account but has refused to do so. She also rejected the Facility's attempts to assist her with her alleged financial difficulties. Her asserted "fraud problem" is therefore unsubstantiated and will not be considered.

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 Appellant is independent and, as evidenced by events that unfolded after this hearing, capable of making her own decisions and living independently. She can continue to receive medical care from the same community-based providers that she already has and, to the extent that any ADL assistance or physical therapy is needed, she would be evaluated for home-based supports after discharge. The record establishes that the proposed discharge plan is appropriate.

Public Health Law § 2803-z requires that the Facility provide written notification to the Appellant 30 days prior to transfer or discharge as it is not alleging danger. Public Health Law § 2803-z(c). The Facility's determination is sustained, and the Appellant may be discharged, as contemplated in the notice dated [REDACTED], 2025, on or after [REDACTED] 2025.

DECISION

Dr. Susan Smith McKinney Nursing and Rehabilitation Center has established that its determination to discharge the Appellant is authorized and that its discharge plan is appropriate. The Facility is authorized to discharge the Appellant on or after ██████ 2025, in accordance with the ██████ 2025 notice.

Dated: April 11, 2025
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge

To:

Sara Freizer
Dr. Susan Smith McKinney Nursing
and Rehabilitation Center
594 Albany Avenue
Brooklyn, New York 11203

██████████
c/o Dr. Susan Smith McKinney Nursing
and Rehabilitation Center
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