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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

April 10, 2025

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Fulton Commons Care Center
60 Merrick Avenue
East Meadow, New York 11554

Rachel Abtan, LMSW
Fulton Commons Care Center
60 Merrick Avenue
East Meadow, New York 11554

Barbara Phair, Esq.
Abrams Fensterman LLP
3 Dakota Drive - Suite 300
Lake Success, New York 11042

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

 Appellant,
from a determination by
Fulton Commons Care 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 8, 2025

Parties: 
Co Fulton Commons Care Center
60 Merrick Avenue
East Meadow, New York 11554
Pro se


Rachel Abtan, LMSW
Fulton Commons Care Center
60 Merrick Avenue
East Meadow, New York 11554
rabtan@fultoncommons.com

By: Barbara Phair, Esq.
3 Dakota Drive -Suite 300
Lake Success, New York
bphair@abramslaw.com

INTRODUCTION

On [REDACTED] 2025, Fulton Commons Care Center (Facility) a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [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 Facility exhibits: Exhibit [REDACTED] *2025 Physician Progress Note*; Exhibit 2 - *Physical & Occupational Therapy Progress Notes and Discharge Summaries*; Exhibit 3 - *Team Discharge Summary*. The ALJ also admitted ALJ Exhibit 1- *Notice of Hearing with March 17, 2025 Discharge Notice*. The Facility presented four witnesses: Fardin Hyderi, MD; Kevin Taglich, Director of Rehabilitation; Luke Laing, Assistant Director of Nursing; and Rachel Abtan, LMSW. The Appellant appeared and testified on her own behalf. A digital recording was made of the proceeding.

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility from the hospital on [REDACTED] 2024. Exhibit (Ex.) 1.
2. The Appellant is alert and oriented and able to make her own decisions. She is independent with all activities of daily living (ADLs) including dressing, grooming, bathing, toileting, transfers, and ambulates without an assistive device. Ex. 1, 2 & 3; Testimony (T.) Hyderi, Taglich, Laing.
3. The Appellant has applied for Social Security disability benefits (SS benefits) but has yet to be approved. T. Abtan, Appellant.
4. The Facility sent applications out to assisted living facilities. Only one assisted living facility (ALF) accepted the Appellant with SS benefits pending. T. Abtan.

5. The [REDACTED], 2025 Discharge Notice states that the Appellant's health has improved sufficiently such that she no longer requires the services of the Facility. The proposed discharge is to [REDACTED], New York ([REDACTED] ALF.) ALJ Ex. 1.

6. 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 she no longer requires the services it provides, and that the Appellant be discharged to [REDACTED] ALF. Dr. Hyderi testified that the Appellant is medically stable and her stay at the Facility has been clinically

uneventful. She is independent with her ADLs and ambulates without an assistive device. The Appellant can be safely discharged into the community.

Mr. Taglich testified that the Appellant was receiving physical and occupational therapy (therapy) upon admission to the Facility. On or about [REDACTED] 2024 the Appellant was discharged from therapy. She is independent with her ADLs and does not require an assistive device for ambulation.

Mr. Laing testified that the Appellant is not receiving any nursing services. She is alert and oriented and independent and does not require assistance with her ADLs. He has often observed the Appellant reading in her room. He and the care team created a plan to discharge the Appellant to an ALF. The plan was discussed with the Appellant.

Ms. Abtan testified that the Appellant makes her own decisions and is independent with all her ADLs. The Appellant lacks income and housing. The Appellant's stay at the Facility is paid for by Medicaid and her stay at the ALF will be paid with her SS benefits. The Appellant has applied for SS benefits but has not been approved yet. The Appellant requested that the Facility attempt to find her an ALF placement. Ms. Abtan applied to the W Group, which has approximately 15-20 ALFs in its group, and [REDACTED] ALF. [REDACTED] ALF is the only ALF that accepted the Appellant with SS benefits pending. [REDACTED] ALF will provide the Appellant with room & board, recreational activities, and social services. The Appellant can apply to transfer to a different ALF once she obtains her SS benefits.

The Appellant testified that she had been staying with her [REDACTED] before she came to the Facility and they will not allow her to return. She has applied for SS benefits and is upset that the Facility did not help her acquire and submit the required paperwork. The Appellant missed a scheduled SS benefits appointment, but she has one coming up on [REDACTED]. She does not object to being discharged to an ALF but believes [REDACTED] ALF is not safe. She would like to remain at the Facility until she secures her SS benefits and can apply and be accepted and discharged to a different ALF.

CONCLUSIONS

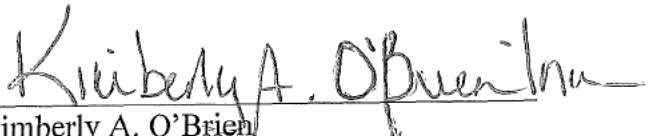
The Appellant is medically stable and is independent with her ADLs and her decision making. Her health has improved sufficiently such that she no longer needs the services the Facility provides. The Appellant does not dispute that discharge to an ALF is appropriate. There is nothing in the record to indicate when she will be approved to receive SS benefits. The Appellant is not entitled to indefinitely remain at the Facility to obtain an ALF placement of her choosing. [REDACTED] ALF has accepted the Appellant with SS benefits pending. Once the Appellant's SS benefits are approved she can apply to transfer to another ALF.

DECISION

The Facility has 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 on or after [REDACTED] 2025, pursuant to the [REDACTED], 2025 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