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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

May 1, 2025

CERTIFIED MAIL/RETURN RECEIPT

Cristina Osorio, MSW
Highland Care Center
91-31 175th Street
Jamaica, New York 11432

██████████
c/o highland Care Center
91-31 175th Street
Jamaica, New York 11432

RE: In the Matter of ██████████ – 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

[REDACTED]

Appellant,

DECISION,

from a determination by
Highland Care Center

Respondent,

to discharge him from a residential health care facility

Hearing Before: Jean T. Carney
Administrative Law Judge (ALJ)

Held via: Cisco WebEx videoconference

Hearing Date: April 16, 2025

Parties: Highland Care Center, Respondent
By: Cristine Osorio, Director of Social Services
cosorio@highlandcare.org

[REDACTED] Appellant, *Pro se*

JURISDICTION

By notice dated [REDACTED], 2025, Highland Care Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant) from the Facility on the grounds that the Appellant's condition had sufficiently improved so that he no longer needed the services provided by the Facility. The proposed discharge location is to [REDACTED], New York. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i):

HEARING RECORD

In support of its determination, the Facility presented documents (Exhibits 1-3); the testimonies of Cristina Osorio, Director of Social Services; Sheneeza Elgin, Social Worker; Joanna Rose Bunnell, Director of Rehabilitation; and Joyce Giannoglou, RN, Director of Nursing (DON). The Appellant testified in his own behalf. ALJ Exhibits I and II were also admitted; and the hearing was digitally recorded.

ISSUE

Has the Facility established that the determination to discharge the Appellant is necessary and that its discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to the testimony of the witness ("T") at the hearing and exhibits ("Exh") found persuasive in arriving at a particular finding. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2020, from [REDACTED] Hospital for short term rehabilitation, with relevant diagnoses of [REDACTED] (ALJ II).

2. The Appellant was discharged from physical therapy on [REDACTED], 2025, having reached maximum potential. He requires set-up in bed mobility and transfers, and is otherwise independent in his activities of daily living (ADLs). (Exh 2; T Ms. Bunnell).

3. The Appellant can communicate his needs, makes appropriate decisions, and is oriented to time and place. (T Ms. Giannoglou and Appellant).

4. The Appellant has been accepted by [REDACTED], an Assisted Living Facility (ALF) in [REDACTED]. The Appellant has not seen the ALF, and does not know if it will meet his needs. (T Ms. Elgin and Appellant).

5. The Appellant lived in his own apartment prior to being admitted to the Facility; but that apartment is no longer available. Discharge planning has been ongoing, and the Facility has taken the Appellant's preferences into consideration. [REDACTED] was the only ALF in his preferred geographic area to accept him. (T Ms. Elgin).

APPLICABLE LAW

A residential health care facility, also referred to 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] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(1)(i)(a), a resident may only be discharged when the interdisciplinary care team determines that:

- (1) the transfer of discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;

(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; or

(4) the health of individuals in the facility is endangered.

Additionally, 10 NYCRR § 415(i)(1)(ii) requires that the facility ensures complete documentation in the resident's clinical record when transferring or discharging a resident under the above circumstances. The documentation shall be made by:

(a) the resident's physician and, as appropriate, interdisciplinary care team, when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; and

(b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph.

Before it transfers or discharges a resident, the facility must notify the resident of the transfer or discharge, and record the reasons in the clinical record. (10 NYCRR § 415.3[i][1][iii]). The written notice must include the reason for the transfer or discharge, the specific regulations that support the action, the effective date of the transfer and the location to which the resident will be discharged. (10 NYCRR § 415.3[i][1][v]).

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision. (*Stoker v. Tarantino*, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3rd Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

DISCUSSION

The Facility failed to meet its burden of showing that the discharge is necessary, and the plan is appropriate. The Facility alleges that the Appellant no longer needs the services of the Facility. In order to meet the regulatory requirements for discharging a resident on the grounds that their condition has improved such that they no longer need the services of the facility, the Facility must ensure complete documentation in the resident's record, made by "the resident's physician, and, as appropriate, interdisciplinary team." (10 NYCRR § 415[i][1][ii][a]). The Facility's only evidence from the Appellant's physician was a brief letter containing a conclusory statement that the Appellant "is medically cleared and appropriate for a lower level of care." (Exh 1). The only portion of the Appellant's medical record offered by the facility indicates that he requires assistance with bed mobility and transfers, which contradicts the Director of Rehabilitation's testimony that no physical assistance with bed mobility and transfers is required. (T Ms. Bunnell). Due to the Facility's failure to provide complete documentation in the Appellant's clinical record, the grounds for discharge must be denied.

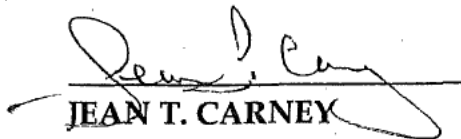
In light of the foregoing, there is no need to address whether the discharge plan is appropriate. However, it is noted that the Facility failed to address how the proposed discharge location will meet the Appellant's needs. A discharge plan must "[address] the medical needs of the resident and how these will be met after discharge." (10 NYCRR § 415.3[i][1][vi]). The DON testified that an ALF may administer the Appellant's medications; but there was no evidence regarding how this ALF's services would meet the Appellant's needs. The record also indicates that the Appellant has not visited this ALF, and has no clear understanding of what to expect if he was discharged there.

ORDER

Highland Care Center has failed to establish that the Appellant's discharge is necessary, and its discharge plan is appropriate.

1. The Appellant may not be discharged pursuant to the notice dated [REDACTED] 2025.
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
May 1, 2025


JEAN T. CARNEY
Administrative Law Judge

TO: Cristina Osorio, MSW
Highland Care Center
91-31 175th Street
Jamaica, New York 11432


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