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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 28, 2025

CERTIFIED MAIL/RETURN RECEIPT

Ariel Smith, Administrator
Absolut Center of Endicott
301 Nantucket Drive
Endicott, New York 13760

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[redacted]
c/o Absolut Center of Endicott
301 Nantucket Drive
Endicott, New York 13760

Danielle Labare, Ombudsman Supervisor
609 East Main Street, Suite 11
Endicott, New York 13760

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: nm
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

DECISION

Absolut Center of Endicott
Respondent,

to discharge her from a residential health care facility.

Hearing Before: Jean T. Carney
Administrative Law Judge

Held via: Cisco WebEx videoconference

Hearing Date: April 24, 2025

Parties: [redacted] Appellant
[redacted]

By: Danielle Labare, Ombudsman
dlabare@actionforolderpersons.org

Absolut Center of Endicott, Respondent
By: Richard H. Miller III, Esq.
Hinman, Howard & Kattell LLP
rmiller@hhk.com

JURISDICTION

By notice dated [redacted], 2025, Absolut Center of Endicott (Facility or Respondent), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [redacted] (Appellant or Resident) from the Facility on the grounds that her health has improved sufficiently so she no longer needs the services provided by the facility. The proposed discharge location is to the Department of Social Services (DSS), or another appropriate placement found within 30 days. 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 1-5); the testimonies of Ariel Smith, Nursing Home Administrator (Administrator); and Jialin Nah, MD, Medical Director. The Appellant testified in her own behalf. The Notice of Hearing with Discharge Notice was admitted into evidence (ALJ I). The hearing was digitally recorded and made part of the record.

ISSUES

Has the Facility established that the Appellant's discharge is necessary and discharge plan is appropriate?

FINDINGS OF FACTS

Citations in parentheses refers to the testimony of the witness ("T") at the hearing and exhibits ("Exh") found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejected in favor of the cited evidence. 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 female who was admitted to the Facility on [redacted], 2023, from [redacted] Hospital for short term wound care. (Exh 1; T Dr. Nah).

2. The Appellant was discharged from physical and occupational therapy in [redacted] of 2024. She is independent in her activities of daily living (ADLs), such as toileting, ambulating, feeding and dressing herself. The Appellant is also independent in her Instrumental Activities of Daily Living (IADLs), including managing her funds, and performing tasks such as grocery shopping. The Appellant does not use any assistive devices while ambulating; she has no nursing or clinical needs that require the services of a skilled nursing facility. The Appellant is alert and capable of making decisions regarding her care. (Exhs 1.4, 3, and 5; T Dr. Nah, Ms. Smith, and Appellant).

3. The Facility worked with the Appellant in applying to the [redacted]), a state funded program that assists people in finding housing. There was some delay with the Appellant working with [redacted] due to funding issues; but that was resolved in [redacted] of 2024 and the Appellant was accepted to the program. The Appellant has received housing referrals from [redacted] but has failed to follow up with those referrals. The Appellant goes out on pass several times a week to attend programs and appointments; she is very active in her church. (Exhs 1.3, 4, and 5; T Ms. Smith and Appellant)

5. The Facility has worked with the Appellant on discharge planning since she was admitted. Social work staff met with the Appellant on numerous occasions and attempted to find alternate discharge locations before resorting to DSS. Prior to being admitted to the Facility, the Appellant was living with friends, which is no longer an option. The Facility referred the Appellant to several Assisted Living Facilities (ALFs); but she was not accepted at any of those facilities. If DSS has no emergency shelter placements available on the day the Appellant is discharged, the facility will take her back until such shelter placement becomes available. (T Ms. Smith).

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.

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 has met its burden of showing that the discharge is necessary, and the discharge plan is appropriate. 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 evidence establishes that the Appellant's medical needs can be met in the community, and she no longer needs the services provided in the Facility. The Appellant's medical record contains complete documentation establishing that she is independent in her ADLs and can manage her needs in the community. Dr. Jah's testimony corroborates the grounds alleged in the Discharge Notice, and demonstrates that the Appellant's health has improved sufficiently so that she no longer needs the services provided by the facility.

Initially, the Appellant argued that the Discharge Notice was defective because the proposed discharge date of [redacted], 2025 was only 28 days after the date the notice was issued. This argument is moot because the hearing was held 30 days after the proposed discharge date, giving the Appellant 58 days actual notice.

Essentially, the Appellant wants to be discharged from the Facility; but opposes the discharge to DSS and would like more time to obtain her own apartment. In support of her request, the Appellant notes that her [redacted] has increased since receiving the Discharge Notice. It is clear from the Appellant's testimony and medical record that she suffers from [redacted] Her testimony was [redacted] and [redacted] at times; but there was no doubt that she understood the purpose of the proceeding, including the basis for her discharge and the proposed discharge location. While I sympathize with the Appellant's

concerns, the record reflects that her [redacted] can be managed in the community and she does not require skilled nursing care.

The evidence establishes that the Appellant was discharged from rehabilitation services in [redacted] of 2024, and she has no skilled needs. She has been working with [redacted] to obtain housing since [redacted] of 2024, but she has no housing alternatives available to her now. The evidence also establishes that the Facility has worked with the Appellant to explore other discharge locations; but at this time, discharge to DSS is the only available option.

ORDER

Absolut Center of Endicott has established that its determination to discharge the Appellant is necessary, and that the discharge location is appropriate.

1. The Facility is authorized to discharge the Appellant as provided in the Discharge Notice dated [redacted] 2025.
2. The Facility will ensure that the Appellant is discharged with a 30-day supply of medications, and will assist the Appellant in scheduling follow up medical appointments.
3. 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: **April 28, 2024**
Albany, New York

JEAN T. CARNEY
Administrative Law Judge

TO: Ariel Smith, Administrator
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