



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Acting Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

January 24, 2017

CERTIFIED MAIL/RETURN RECEIPT

Ioana Dulghery, SW
Coler Rehabilitation &
Nursing Care Center
900 Main Street
Roosevelt Island, New York 10044

██████████ Resident
c/o Coler Rehabilitation &
Nursing Care Center
900 Main Street
Roosevelt Island, New York 10044

David Bohrer
McAloon & Friedman, P.C.
123 William Street, Floor 25
New York, New York 10038-3804

Charles Gourgey, Ombudsman
55 West 14th Street
Apt. 4A
New York, New York 10011

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,

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:nm
Enclosure

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

In the Matter of an Appeal, pursuant to
10 NYCRR 415.3, by

██████████

Appellant,

from a determination by

COLER REHABILITATION and NURSING CARE
CENTER,

Respondent,

to discharge him from a residential health care facility.

COPY

DECISION

By notices dated ██████████ and ██████████ 2016, the Coler Rehabilitation and Nursing Care Center (the Facility) determined to discharge ██████████ (Resident) from care. Resident appealed the Facility's discharge determination and plan.

Administrative Law Judge Jankhana Desai heard this matter on December 29, 2016, at the Facility, located in Roosevelt Island, New York. Charles Gourgey, Ombudsman with the New York City Long Term Care, represented Resident. David Bohrer, Esq., represented the Facility. The record was held open until January 13, 2017, to allow both parties to submit additional documents that were made part of the record in this matter.

Witnesses testified, documentary evidence was received, and arguments were heard. An audio recording of the hearing was made.

ISSUES

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

FACTUAL FINDINGS

1. The Facility is a residential health care facility, or nursing home, located in Roosevelt Island, New York, and is subject to Article 28 of the Public Health Law.

2. Resident is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2014. He had previously been admitted to the facility on [REDACTED], 2009. Resident's medical conditions include [REDACTED], and [REDACTED]. He also has a history of [REDACTED] surgery, and currently has a [REDACTED] wound that is healing.

3. More than [REDACTED] years ago, Resident was transferred to the Independent Living Unit in the Facility, intended for individuals who are independent in activities of daily living.

4. The Facility's care team, including its attending physician, Dr. Rajiv Shukla, has now determined that Resident no longer requires nursing home care and can safely be discharged to the care of a [REDACTED] shelter.

5. The Facility issued the [REDACTED] and [REDACTED] 2016 Notices of Discharge on the basis that Resident's health had improved sufficiently such that Resident no longer needed the services provided by the Facility.

6. Resident made a timely request for an appeal of the discharge determination and has remained at the Facility pending this decision.

7. Resident is alert and oriented and is independent in activities of daily living, including dressing, bathing, and eating. Since the infliction of [REDACTED], Resident has ambulated with the assistance of a cane. At the present time, he uses a [REDACTED] [REDACTED] for all travel. He leaves the Facility often, with excursions for shopping, eating out, and traveling to [REDACTED] frequently returning after the Facility's curfew.

8. The Facility's discharge plan is to transfer Resident to the [REDACTED] Shelter in [REDACTED] (the [REDACTED] Shelter). The Facility will provide Resident with medication prescriptions and education for the administration of his weekly [REDACTED]. The Facility will donate to the Resident the [REDACTED] he currently uses. Resident has previously resided within the shelter system.

9. It is the professional opinion of Resident's care team at the Facility, including Dr. Shukla, that the Facility's discharge plan is safe and appropriate.

APPLICABLE LAW

1. The hearing was held in accordance with Article 28 of the Public Health Law and regulations of the Department of Health at 10 NYCRR Parts 51 and 415. The Facility has the burden of proving that the transfer is necessary and the discharge plan appropriate. 10 NYCRR 415.3(h)(2)(iii).

2. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(h)(1)(i). It states, in pertinent part:

(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:

[REDACTED] ... [REDACTED]

(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;

DISCUSSION

The Facility has met the requirements of 10 NYCRR 415.3 (h)(1)(i)(a)(2). The Facility proved that Resident's health has improved sufficiently so that he no longer needs the services

provided by the Facility. The Facility also established that its plan of discharge to the ██████ Shelter is appropriate.


It is the opinion of his care team, including Dr. Shukla, that Resident is no longer in need of nursing home care. Resident prefers to remain at the Facility, but offered no persuasive evidence to controvert the Facility's determination. Resident independently performs his activities of daily living, successfully travels using a ██████ and frequently goes out in the community. He travels solo from Ro ██████. He has successfully been placed in the Facility's Independent Living Unit for more than ██████ years. In sum, the evidence at hearing established that Resident's health has improved sufficiently such that the Facility may appropriately discharge him.

The Facility demonstrated that its plan to discharge Resident to the ██████ Shelter is appropriate. Resident offered no persuasive evidence to refute that determination. Resident has testified that he does not want to be discharged to a shelter, feeling that shelter resources would be inadequate to meet his healthcare needs and believing that his valuables will get stolen in the shelter system. Resident has, however, previously lived in the shelter system. The Facility attempted to explore other placement options; however, Resident cannot be transferred to placements such as an adult home or public housing due to not having legal immigration status. It is, therefore, appropriate for the Facility to discharge Resident to the ██████ Shelter. Resident is free to independently seek other placement options, but may not remain at the Facility in the interim.

DECISION

██████████ appeal is denied. The Coler Rehabilitation and Nursing Care Center is authorized to discharge Resident in accordance with its discharge plan.

DATED: January 23, 2017



JANKHANA DESAI
Administrative Law Judge