



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 6, 2017

CERTIFIED MAIL/RETURN RECEIPT

Deborah Bernier, Operations Manager
Terrace View
462 Grider Street
Buffalo, New York 14215

[REDACTED], Resident
c/o Terrace View
462 Grider Street
Buffalo, New York 14215

Regina A. Del Vecchio, Esq.
Terrace View Long Term Care Facility
462 Grider Street
Buffalo, New York 14215

[REDACTED]

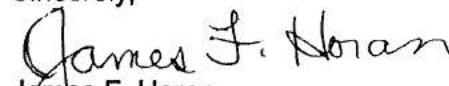
RE: In the Matter of [REDACTED] - Discharge Appeal

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,


James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
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

**Terrace View Long Term Care
Facility,**

Respondent,

to discharge her from a residential
health care facility.

DECISION

COPY

Hearing Before: John Harris Terepka
Administrative Law Judge

Held at: Terrace View Long Term Care Facility
462 Grider Street
Buffalo, New York 14215

Hearing Date: January 4, 2017

Parties: Terrace View Long Term Care Facility
462 Grider Street
Buffalo, New York 14215
By: Regina A. Del Vecchio, Esq.

[REDACTED]
Terrace View Long Term Care Facility
462 Grider Street
Buffalo, New York 14215
and

[REDACTED]

JURISDICTION

Terrace View Long Term Care Facility (the Respondent), a residential health care facility subject to Article 28 of the Public Health Law, determined to discharge [REDACTED] (the Appellant) from care and treatment in its nursing home. Pursuant to 10 NYCRR 415.3, the Appellant appealed the discharge determination to the New York State Department of Health.

SUMMARY OF FACTS

1. Respondent Terrace View Long Term Care Facility is a nursing home located in Buffalo, New York. Appellant [REDACTED] is a resident of the facility.
2. By notice dated [REDACTED], 2016, the Respondent advised the Appellant of its determination to discharge her on or about [REDACTED], 2016, on the grounds that her health has improved sufficiently that she no longer needs the services provided by the facility. (Exhibit 1.)
3. It is the professional opinion of the Appellant's care team, including her treating physician, that the Appellant is no longer in need of nursing home care and that the level of care provided by an assisted living program (ALP) can meet her care needs. (Exhibit 4.) She is ambulatory and able to perform all activities of daily living with the supervision and assistance available in an ALP. The Appellant and her [REDACTED] agree that she no longer is in need of nursing home care and that transfer to an ALP would be an appropriate discharge plan.
4. The Respondent's discharge plan is to transfer the Appellant to [REDACTED] an ALP in [REDACTED] [REDACTED] [REDACTED] has evaluated the Appellant, concluded it is able to meet her care needs, and has agreed to admit her. (Exhibit 3.) The

Respondent's discharge plan includes arrangements for transfer and other logistical assistance such as medications and physician referrals to be provided as needed.

5. The Appellant remains at Terrace View pending the outcome of this proceeding.

ISSUES

Has the Respondent established that the transfer was necessary and the discharge plan appropriate?

DISCUSSION

A residential health care facility (RHCF), or nursing home, is a residential facility providing nursing care to sick, invalid, infirm, disabled or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital. PHL 2801; 10 NYCRR 415.2(k). Transfer and discharge rights of RHCF residents are set forth at 10 NYCRR 415.3(h). The Respondent relies on 18 NYCRR 415.3(h)(1)(i)(a)(2), which provides, 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:
 - ...
 - (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.

The Respondent has the burden of proving that the transfer was necessary and the discharge plan appropriate. 10 NYCRR 415.3(h)(2)(iii).

The Appellant's care team, including her treating physician, have concluded that she does not require nursing home care and that an ALP is the appropriate placement for her. The evidence supporting this opinion is uncontroverted.

An assisted living program (ALP) is an adult care facility that is licensed as a home care services agency, home health agency or long term home health care program. SSL 461-l(1)(a). An ALP provides housing, on-site monitoring, personal services and home care services in a home-like setting. Services include daily food service, 24-hour on-site monitoring, case management and the development of an individualized service plan for each resident. 10 NYCRR 1001.2(a). Persons eligible for ALP residence include individuals who can be appropriately cared for in an ALP, have a stable medical condition and are able, with direction, to take action sufficient to assure self-preservation. SSL 461-l(1)(d).

Because an ALP provides a less restrictive level of care than a nursing home, the proposed transfer is consistent with the Respondent's obligation to "provide each resident with considerate and respectful care designed to promote the resident's independence and dignity in the least restrictive environment commensurate with the resident's preference and physical and mental status." 10 NYCRR 415.4.

The Appellant and her [REDACTED] agree that moving to an ALP is the right plan for her. She looks forward to the less restrictive level of care it can provide, including increased freedom and ease in coming and going, and having her own kitchen facilities.

[REDACTED] is a particularly good location for her as it is in [REDACTED] her home town.

The Appellant's only concern in asking for this hearing was that she has not visited [REDACTED] and so had reservations about moving there without seeing it. She and her [REDACTED] agreed to make a visit there in the next few days. They also want some additional time to explore other discharge possibilities. The Respondent has provided a list of other facilities they may want to investigate, and agrees to facilitate the application

process for any alternative placements identified as appropriate. The parties agreed that two additional weeks would be sufficient for those purposes. The Respondent is willing to delay the discharge to give her that time.


The parties agreed that the discharge would be delayed an additional two weeks. The Respondent is thereafter entitled to proceed with the transfer to ██████████ or to such other location as the Appellant may choose.

DECISION: Respondent Terrace View Long Term Care Facility has established valid grounds for the discharge of Appellant ██████████ and has established that the discharge plan is appropriate.

The Respondent is authorized to discharge the Appellant in accordance with the ██████████ 2016 discharge notice. The discharge may proceed on or after ██████████ 2017.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York
January 5, 2017



John Harris Terepka
Administrative Law Judge
Bureau of Adjudication