



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 4, 2017

CERTIFIED MAIL/RETURN RECEIPT

Zoya Shickhman, MSW
Seagate Rehabilitation &
Nursing Center
3015 West 29th Street
Brooklyn, New York 11224

[REDACTED], Resident
c/o Seagate Rehabilitation &
Nursing Center
315 West 29th Street
Brooklyn, New York 11224

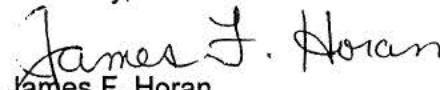
RE: In the Matter of [REDACTED] – Discharge Appeal

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

-----X
 In the Matter of an Appeal, pursuant to :
 10 NYCRR § 415.3, by :
 :
 [REDACTED] :
 :
 Appellant, :
 :
 from a determination by :
 :
 SEAGATE REHABILITATION :
 AND NURSING CENTER :
 :
 Respondent, :
 :
 to discharge him from a residential health :
 facility :
 -----X

DECISION

COPY

Seagate Rehabilitation and Nursing Center ("Facility") issued a Notice of Discharge to [REDACTED] ("Resident"). The Resident requested an appeal of the proposed discharge.

Administrative Law Judge ("ALJ") William J. Lynch, Esq., held a hearing on December 29, 2016, at the Facility which is located at 3015 West 29th Street, Brooklyn, New York. The hearing was held in accordance with the Public Health Law of the State of New York ("PHL"); Parts 51 and 415 of Volume 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"); Part 483 of the United States Code of Federal Regulations ("CFR"); and the New York State Administrative Procedure Act ("SAPA"). Evidence was received and witnesses were examined. An audio recording of the proceeding was made.

The following individuals were present for the hearing:

██████████ Resident; Marawan Ahmed, P.T., D.P.T.; and Zoya Shikhman, M.S.W.

STATEMENT OF THE CASE

Respondent made a determination to discharge the Resident from its Facility effective December 20, 2016. The stated reason for the discharge was that the Resident's health had improved sufficiently so that he no longer required the services provided by a skilled nursing facility. The proposed discharge location is an assisted living facility located at ██████████ ██████████ ██████████ ██████████ ██████████. The Resident filed a timely request for an appeal of the discharge decision and has remained in the Facility pending this determination.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether the Facility has established a basis which permits the Resident's discharge from the Facility and whether the proposed discharge plan is appropriate. The Facility has the burden of proving its case by substantial evidence (10 NYCRR § 415.3[h][2][iii], SAPA § 306[1]).

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Citations in parentheses refer to testimony or exhibits. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. The Resident is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2016, for [REDACTED] term rehabilitation services. His diagnoses included [REDACTED] and [REDACTED] pain. (Respondent Ex. 5; Recording @ 4:40).

2. The Resident had difficulty ambulating when he was admitted. The Facility provided the Resident with restorative physical therapy until [REDACTED] 2016, when the therapy was discontinued because the Resident had met his rehabilitation goals for strengthening his [REDACTED] and ambulation. His balance is now normal, and he is able to walk [REDACTED] feet with a [REDACTED] cane. (Facility Ex. 1, Recording @ 5:15; 9:30).

3. The Facility's interdisciplinary care team determined that the Resident no longer required skilled nursing services and could safely be discharged to an assisted living facility. (Facility Ex. 1, 2; Recording @ 5:55).

4. The Resident's attending physician determined that the Resident was medically stable for discharge. (Facility Ex. 2).

5. On [REDACTED], 2016, the Facility issued a discharge notice to the Resident. (Respondent Ex. 3; Recording @ 3:30).

ANALYSIS AND CONCLUSIONS

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR 415.3[h][1]). The Facility alleged that the Resident's discharge is permissible pursuant to 10 NYCRR 415(h)(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.

The Resident claimed that he should be permitted to remain at the Facility because there are other residents as young as he who are permitted to reside there.

The Facility explained that persons as young as the Resident (age [REDACTED]) may reside in the Facility if required by their medical and physical needs, but that the Resident has met his rehabilitation goals and no longer needs to remain in a skilled nursing facility. At the time of his admission to the Facility, the Resident had difficulty [REDACTED] and required restorative therapy. The goals of that therapy have been met, and the Resident

is now able to obtain any required follow-up rehabilitation and medical care in the community.

The discharge plan indicates that the Facility will provide transportation to the assisted living facility, medications and prescriptions. The Resident's attending physician agrees with the proposed discharge plan. Based on the foregoing, the Facility has established a permissible basis for the Resident's discharge and that the discharge plan is appropriate.

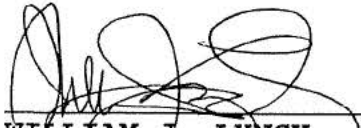
DECISION AND ORDER

1. The Facility is authorized to discharge the Resident in accordance with its discharge plan.

2. This decision shall be effective upon service on the parties by facsimile transmission, personal service or by certified or registered mail.

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 (CPLR).

DATED: Albany, New York
January 4, 2017


WILLIAM J. LYNCH
Administrative Law Judge