



**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

February 2, 2017

CERTIFIED MAIL/RETURN RECEIPT

Irit Maor, Social Worker
Coler Rehabilitation & Nursing CC
900 Main Street
Roosevelt Island, New York 10044

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

David Bohrer, Esq.
McAloon & Friedman
123 Williams Street – 25th Floor
New York, New York 10038

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

A Discharge Notification, dated ██████████ 2016, was issued to ██████████, (“Appellant”) by Coler Rehabilitation and Nursing Care Center (“Respondent” or “Facility”). The Resident appealed the Facility’s proposed Transfer or Discharge. The pre-transfer Hearing was held on January 27, 2017,¹ at the Facility, 900 Main Street, Roosevelt Island, New York, before Kimberly A. O’Brien, Esq., Administrative Law Judge (“ALJ”).

The Facility was represented by David Bohrer, Esq. The Appellant appeared in person and testified on his own behalf. The Hearing was held in accordance with the Public Health Law of the State of New York; Part 415 of Volume 10 of the New York Code of Rules and Regulations (“NYCRR”); the United States Code of Federal Regulations (“CFR”) 42 CFR Subpart E (§§431.200 - 431.246) and 42 CFR Part 483; the New York State Administrative Procedure Act;

¹ The ALJ proposed a January 17, 2017, hearing date, but Daniel Berry, Risk Manager, indicated that the Facility would like more time to prepare for the hearing and coordinate with its counsel.

and 10 NYCRR Part 51.

Evidence was received, witnesses were sworn or affirmed and examined. Only one exhibit was offered and admitted into evidence. The exhibit (“Ex.1”) contains 16 pages and includes: [REDACTED] 16 Discharge Notice; Physician progress notes; [REDACTED] /17 Letter from Ms. Chen, Nurse Practitioner, stating that the Resident is medically stable and ready for discharge and that the shelter is an appropriate discharge location; Psychologist progress notes; and Social Worker notes. A digital recording of the proceeding was made. The following individuals were present at the hearing: David Bohrer, Esq., Facility Counsel; Irit Maor, LCSW, Social Worker; Nicola Shian Jin Chen, Nurse Practitioner; Nazma Hossain, M.D.; [REDACTED], Resident/Appellant; and [REDACTED] Resident/Appellant Friend & “Healthcare Proxy.”

STATEMENT OF THE CASE

The [REDACTED] 2016 Notice of Transfer or Discharge indicates that pursuant to 10 NYCRR§415.3 (h)(1)(i)(a)(2) the health of the Resident has improved sufficiently so that he no longer requires the services provided by the Facility. The Facility made a determination to discharge the Resident from the Facility to [REDACTED] Shelter, [REDACTED], New York (“shelter”), effective [REDACTED] 2017 [Ex. 1]. The Resident is aware of the Facility’s assertions and appealed his discharge.

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 exhibits or testimony. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence was considered and rejected in favor of the cited evidence.

1. The Resident, a [REDACTED] year old male, was admitted to the Facility on [REDACTED], 2010 [Ex 1].

2. The Resident was admitted from [REDACTED] Hospital after being treated for an infection of his [REDACTED]. The Resident's diagnoses include [REDACTED], and [REDACTED] [Testimony of Ms. Chen & Dr. Hossain; Ex. 1].

3. The Resident is alert and oriented and can make his own decisions. The Resident is able to ambulate and is independent with feeding, bathing, grooming, dressing and toileting [Testimony of Ms. Chen & Dr. Hossain].

4. All the Resident's medical issues are currently controlled with oral medications that can be self-administered. The Resident requires regular blood work, [REDACTED] and eye exams, as well as [REDACTED] services, which can all be obtained in the community on an outpatient basis [Testimony of Dr. Hossain & Ms. Chen].

5. Both the Resident's primary care provider and his attending physician have cleared the Resident for discharge to the shelter [Testimony of Ms. Chen & Dr. Hossain; Ex. 1].

DISCUSSION

Ms. Chen, the Resident's primary care provider, has provided care to the Resident for a [REDACTED] or more; and Dr. Hossain has been the Resident's attending physician for approximately [REDACTED] years and supervises Ms. Chen. Both Ms. Chen and Dr. Hossain agree that the Resident's medical condition is stable; he is independent with all activities of daily living and able to return to the community; and discharge to the shelter is appropriate [FOF 3, 4&5].

The shelter is not the first discharge location the Facility proposed to the Resident. On or before [REDACTED] of 2016, Ms. Maor, the Resident's social worker, discussed the public housing

option with the Resident, but the Resident refused to apply.² Subsequently, Ms. Maor set up tours and applied to adult homes on behalf of the Resident. While the Resident was accepted for placement at three adult homes, he refused each placement.³ While the shelter placement is appropriate, an adult home placement would better meet the Resident's needs [Testimony of Ms. Chen, Dr. Hossain & Ms. Maor].

The Resident does not want to apply for public housing, go to an adult home or go to the shelter. The Resident wishes to remain at the Facility. He has friends at the Facility and participates in a number of activities including writing and poetry workshops, art classes, and ██████ in the ██████. The Resident has established relationships and routines at the Facility and it is understandable that he does not wish to leave the Facility. However, the Facility has shown that the Resident no longer has skilled needs and that the shelter is available and appropriate to meet his needs at this time. It must be noted that prior to commencing the hearing, there was extensive discussion about two adult homes where the Resident had previously been accepted, and the possibility of expanding the search to ██████. The Facility is still willing to assist the Resident with finding an adult home placement, but it cannot guarantee that the adult homes that accepted him in 2016 currently have beds available. The Resident is free to leave the Facility at any time and he is not required to go to an adult home or the shelter, but he cannot remain at the Facility. If the Resident and the Facility do not ultimately agree on an alternative discharge location, the Facility may discharge the Resident on or after ██████ 2017, in accordance with its ██████ ██████ discharge notice.

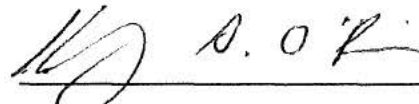
² The Resident wants to live in '██████'. Ms. Maor explained to the Resident that public housing options in ██████ are limited and it was likely that he would be offered housing in '██████'. The Resident said that he does not want to live in that area of ██████.

³ The Resident was accepted to adult homes located in ██████.

ORDER

1. The Appeal by the Resident, [REDACTED], of his discharge/transfer is **denied**; and
2. The Facility **may** discharge the Resident to the [REDACTED] [REDACTED] Shelter, [REDACTED] [REDACTED] on or after [REDACTED], 2017, in accordance with the discharge notice; and
3. This Order may be appealed to a court of competent jurisdiction pursuant to the New York Civil Practice Law and Rules; and
4. This Order shall be effective on service on the parties.

DATED: New York, New York
January 31, 2017



KIMBERLY A. O'BRIEN
Administrative Law Judge

[REDACTED], Resident
C/o Coler Rehabilitation and Nursing Care Center
900 Main Street
Roosevelt Island, NY 10044

Ms. Irit Maor, LSCW, Social Worker
Coler Rehabilitation and Nursing Care Center
900 Main Street
Roosevelt Island, NY 10044

Mr. David Bohrer, Esq.
McAloon & Friedman
123 Williams Street - 25th floor
New York, NY 10038