



Department of Health

ANDREW M. CUOMO
Governor

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

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

June 6, 2017

CERTIFIED MAIL/RETURN RECEIPT

Robert Herel, DSW
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c/o Cobble Hill Health Center
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Danielle Lubin, Bklyn Borough Supervisor
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Center for Independence of the Disabled NY (CID-NY)
80-02 Kew Gardens Road – Suite 107
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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

COPY

In the Matter of

█/Cobble Hill Health Care Center

Administrative Law Judge's Decision

Appeal from a Nursing Home Resident Involuntary Discharge pursuant to Title 10 (Health) of the Official Codes, Rules and Regulations of the State of New York (NYCRR) §415.3(h)

Before: Administrative Law Judge (ALJ) James F. Horan

For Cobble Hill Health Care Center (Facility): Carolyn Wolf, Esq.

For Resident █ (Appellant): *Pro Se*

The Facility in Kings County proposes to discharge the Appellant nursing home resident involuntary to the New York City Shelter System (Shelter System). The Facility states that grounds exist for the discharge because the Appellant's condition has improved sufficiently so that he no longer requires care in a nursing home. The Appellant agrees that he no longer requires care in a skilled nursing facility, but he challenges the discharge to the Shelter System and to other locations that the Facility proposed. After considering the record, the ALJ finds that the Facility has proposed a safe and appropriate discharge to the Shelter System.

I. Background

Under Title 10 NYCRR § 415.3(h), a nursing home resident holds certain rights with regard to transfer or discharge. Title 10 NYCRR § 415.3 (h)(1)(i)(a)(2) allows involuntary discharge if a resident's health has improved sufficiently so that the resident no longer requires the services that the facility provides. Under the standards at 10 NYCRR § 415.2(k), a nursing

home provides nursing and professional services twenty-four hours per day for patients who require those services, but do not require services in a general hospital. In effect, this proceeding acts as a stay on any discharge until the decision on the discharge appeal. If a decision approves the discharge grounds and discharge plan, the proceeding ends with the decision and the discharge may proceed pursuant to the discharge plan.

The Facility provided a Discharge Notice [ALJ Exhibit I, Notice of Hearing] to the Appellant on [REDACTED], 2017. As grounds for the discharge, the Discharge Notice stated that the Appellant no longer requires services in a skilled nursing facility and the Notice identified the Shelter System as the discharge location. The Appellant then requested the hearing that took place at the Facility in Brooklyn on April 4, 2017. The ALJ conducted the hearing pursuant to New York State Administrative Procedure Act (SAPA) Articles 3-5 (McKinney Supp. 2017) and Title 10 NYCRR Part 415.

At the hearing, the Appellant spoke on his own behalf and he was accompanied at the hearing by Yemi Faderhuns, Health Homes Supervisor, and Nikeechee Green, Care Coordinator Health Home from the Institute for Community Living (ICL). Ms. Faderhuns and Ms. Green indicated that they had been trying to assist the Appellant in obtaining housing. The Facility presented one witness: Director of Social Work (DSW) Robert Herel, LCSW.

The ALJ received the Notice of Hearing into the record as ALJ Exhibit I. The ALJ provided both parties with a copy of the documents that the Department of Health's Complaint Resolution Bureau (CRB) had forwarded to the ALJ Office concerning the Appellant's discharge appeal. These documents included material that the Facility had provided to CRB. The ALJ marked those documents as ALJ Exhibit II for identification. The Facility indicated that it wished to offer two documents from this package into the record: the face sheet from the Appellant's

medical chart and a [REDACTED], 2017 letter to CRB from the DSW and Himanshu Pandya, MD, the Facility's Medical Director. The ALJ received these documents into the record as ALJ Exhibit II. The ALJ also accepted into the record three letters from the ALJ to the parties: an [REDACTED] 2017 letter requesting information about a meeting the Appellant had concerning housing [ALJ Exhibit III], a [REDACTED] 2017 letter forwarding post-hearing exhibits from both parties [ALJ Exhibit IV] and a May 15, 2017 letter forwarding a post-hearing exhibit from the Facility [ALJ Exhibit V].

The Appellant offered into the record two documents at the hearing: seven pages concerning the denial of the Appellant's application to participate in the Nursing Home Waiver Program [Appellant Exhibit A] and a [REDACTED], 2014 letter requesting more documentation from the Appellant concerning a Medicaid application [Appellant Exhibit B]. The ALJ left the record open following the hearing to receive additional documentation from both parties. The Appellant provided three post-hearing submissions: an [REDACTED], 2017 letter from the Center for Independence of the Disabled NY (CID-NY) requesting to participate in any further hearings on the Appellant's behalf [Appellant Exhibit C], an [REDACTED] 2017 submission from CID-NY concerning the Appellant's eligibility for the [REDACTED] and what [REDACTED] Covers [Appellant Exhibit D] and three pages concerning the Appellant's referral for a [REDACTED] 2017 [REDACTED] Test [Appellant Exhibit E].

The Facility offered two post-hearing letters from the DSW into evidence dated [REDACTED] 2017 [Facility Exhibit 1] and [REDACTED] 2017 [Facility Exhibit 2].

The record also included a digital audio recording from the hearing on Compact Disc (CD). References to testimony from the recording will indicate the time in the recording at which the testimony occurs (e.g. "CD at 12:40" means that the testimony occurs on the hearing

recording 12 minutes and 40 seconds into that recording). The hearing record closed on May 12, 2017.

Under the hearing procedures at §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under SAPA § 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or fact; less than preponderant 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.

II. Findings of Fact

The references in brackets following the findings reflect testimony from the hearing recording or exhibits in evidence [Ex] on which the ALJ relied in making the findings. If contradictory information appears elsewhere in the record, the ALJ considered that information and rejected it.

1. The Appellant entered the Facility on [REDACTED] 2014 to receive treatment for an [REDACTED] [REDACTED] [Ex II].
2. The Facility's Medical Director and the Director of Social Work have documented that the Appellant no longer needs skilled nursing care [Ex II].
3. The Appellant lived in the Shelter System prior to his stay at the Facility [CD at 12:14].
4. The Appellant concedes that he no longer requires services from a skilled nursing facility [CD at 1:10].

5. The Facility found the Appellant placement in an adult home, but the Appellant declined the placement [CD at 13:19].
6. The Appellant also declined housing at a family style home for adults [CD at 14:20].
7. Since 2015, the Appellant has worked with [REDACTED] in applying for [REDACTED] [CD at 33:30].
8. The Appellant is working with CID-NY to become eligible for [REDACTED] vouchers to assist with paying rent, but there is no specific time frame to obtain housing if the Appellant becomes eligible [Ex 2].

III. Conclusions

Under 10 NYCRR § 415.3(h)(1)(i)(a)(2) a skilled nursing facility may discharge a resident involuntarily if the resident's health has improved sufficiently so the resident no longer needs the facility's services. The Appellant concedes that he no longer needs care in a skilled nursing facility, but he wishes to remain in the Facility until he can obtain his own apartment.

The evidence demonstrates that the Appellant completed treatment for his [REDACTED] in 2015 and has since been working on finding a placement in the community. The Appellant has also worked with [REDACTED] on housing for five years and the Facility obtained placements for the Appellant at venues providing a lower level of care, but the Appellant rejected those placements. The evidence is clear that the Appellant can live in the community and the Appellant has offered no evidence that he suffers from any medical conditions which would make shelter placement inappropriate. The Appellant lived in the Shelter System previously, he stated at hearing that he

would go to a shelter as a last resort and he indicated that the Shelter System could provide further assistance in obtaining housing [CD at 38:40].

The ALJ finds that the Facility has been patient and thorough in trying to find an appropriate placement and identified two alternate placements, but the Appellant rejected both placements. The situation has reached the last resort. The ALJ finds that the Facility has proposed an appropriate discharge location with transfer to the Shelter System.

ORDER

NOW; after considering the request for Hearing, the testimony and the documents in evidence, the ALJ issues the following Order:

1. The ALJ affirms the Facility's determination that grounds exist under Title 10 NYCRR § 415.3 (h)(1)(i)(a)(2) for the Appellant's involuntary discharge.
2. The ALJ finds the proposed discharge plan appropriate.

Dated: Menands, New York
June 5, 2017



James F. Horan
Administrative Law Judge

To:

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