



Department of Health

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Commissioner

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

June 30, 2017

CERTIFIED MAIL/RETURN RECEIPT

Amy Krause, DON
Waterville Residential Care Center
220 Tower Street
Waterville, New York, 13480



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:
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

WATERVILLE RESIDENTIAL CARE CENTER,

Respondent,

to discharge him from a residential health
facility

COPY

DECISION
AND ORDER

On [REDACTED] 2016, Waterville Residential Care Center ("the Facility") transferred [REDACTED] ("the Resident") to [REDACTED] at [REDACTED] (" [REDACTED] located in [REDACTED] [REDACTED] The Resident has a [REDACTED], and his [REDACTED] [REDACTED] is his health care proxy. On [REDACTED] [REDACTED], 2017, Ms. [REDACTED] contacted the New York State Health Department's hotline to request the commencement of this appeal. On June 27, 2017, a hearing on the appeal was held before William J. Lynch, Esq., Administrative Law Judge.

The hearing was held in accordance with the Public Health Law of the State of New York; Part 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"); the New York State Administrative Procedure Act ("SAPA"); and 10 NYCRR Part 51.

The hearing was held at the Facility. Evidence was received, witnesses were sworn or affirmed and examined. An audio recording of the proceedings was made. At the conclusion of the testimony, a decision and order was made on the record requiring the Facility to readmit the Resident. This written decision confirms the oral decision and order made on June 27, 2017.

ISSUES

The issues to be determined in this proceeding are whether the Facility's discharge of the Resident was necessary and the discharge plan was appropriate. The Facility has the burden of proof and must prove its case by substantial evidence. (§ 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 was admitted to the Facility on [REDACTED] [REDACTED], 2016, and he is [REDACTED] years of age. (Facility Ex. 2; Recording @ 5:00).

2. The Resident suffers from [REDACTED] [REDACTED] [REDACTED] caused by a [REDACTED] [REDACTED]. The Resident's [REDACTED] [REDACTED] is his healthcare proxy ("the Resident's Health Care Proxy"). (Facility Ex. 1; Recording @ 5:30).

3. On [REDACTED] [REDACTED] 2016, the Facility discontinued the Resident's therapy based on the belief that the Resident was making no progress. (Recording @ 8:30).

4. The Resident's [REDACTED] wanted the Resident to receive additional rehabilitative treatment. (Recording @ 25:45).

5. [REDACTED] is a facility in [REDACTED] [REDACTED] which provides [REDACTED] treatment and care. (Recording @ 9:45).

6. In a telephone conversation, the Resident's Health Care Proxy consented to the Resident's transfer to [REDACTED] with the understanding that the Resident would receive a [REDACTED] to [REDACTED] month program of rehabilitation and then return to the Facility. (Recording @ 20:30).

7. The Facility prepared a discharge notice which it handed to the Resident's [REDACTED] and mailed to the Resident's Health Care Proxy on the day of discharge. However, the discharge notice contains inaccurate and incomplete information concerning the Resident's appeal rights. (Facility Ex. 4; Recording @ 18:40).

8. When [REDACTED] advised the Resident's Health Care Proxy that the Resident had made as much progress in its [REDACTED] program as possible, the Resident's Health Care Proxy requested return to the Facility. (Recording @ 11:45, 30:00).

9. On [REDACTED] [REDACTED] 2017, [REDACTED] advised the Resident's Health Care Proxy that the Facility had refused [REDACTED] request to refer the Resident back to the Facility. (Recording @ 24:30).

ANALYSIS AND CONCLUSIONS

Before a facility discharges a resident, it must notify the resident and the resident's designated representative of the discharge and the reasons for the move in writing (10 NYCRR 415.3[h][1][iii]). In this instance, the Facility issued a notice on the day of the Resident's discharge, [REDACTED] 2016; however, the notice was defective because it provided inaccurate and incomplete information regarding the Resident's appeal rights. Therefore, the notice issued by the Facility failed to comply with

10 NYCRR 415.3[h][1][v], which sets forth the items which must be included in the written notice provided to a resident before discharge.

The Facility claimed that the discharge complied with the regulations because the Resident's Health Care Proxy consented to the transfer to [REDACTED] however, the testimony established that this consent was based on the understanding that the Resident was being sent for specialized treatment of a limited duration. Although the Resident's [REDACTED] urged the Facility to obtain additional rehabilitative treatment for her [REDACTED] and ultimately consented to his transfer to Massachusetts for this treatment, she credibly testified that the Facility communicated to her that the Resident could return to the Facility when his rehabilitation was completed. The Resident's Health Care Proxy also testified credibly that her consent to the transfer was based on statements by the Facility staff asserting that the Resident was temporarily being sent to Massachusetts for a rehabilitative course of treatment.

The Facility indicated at the hearing that it was evaluating the Resident as a new admission to the Facility and that it has refused admission because it was concerned that the Resident's behavior may pose a safety risk to the other residents. However,

the Facility did not discharge the Resident based on an allegation that he posed a safety risk. If the Resident upon his return to the Facility does exhibit behaviors that constitute a safety risk, the Facility is required to raise that issue in a separate proceeding with a discharge notice that complies with the regulations.

The Resident received rehabilitative services at [REDACTED] and his Health Care Proxy has now requested his return to the Facility. Based on the record in this proceeding, the Facility failed to establish that the Resident's Health Care Proxy consented to discharge beyond a temporary therapeutic term. Therefore, the Facility is required to offer the Resident readmission as a resident returning from therapeutic leave.

DECISION AND ORDER

1. The Facility shall readmit the Resident. If a bed is not currently available, the Facility shall admit the Resident to the first appropriate bed before admitting any other person;

2. This Decision confirms the oral decision made on the record on June 27, 2017.

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: Menands, New York
June 30, 2017



WILLIAM J. LYNCH
Administrative Law Judge