



Department of Health

ANDREW M. CUOMO
Governor

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

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

November 8, 2017

CERTIFIED MAIL/RETURN RECEIPT

Liana Rutenberg-Diaz
Fordham Nursing & Rehab
2678 Kingsbridge Terrace
Bronx, New York 10463

[REDACTED]
c/o Fordham Nursing & Rehab
2678 Kingsbridge Terrace
Bronx, New York 10463

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: ISM
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

In the Matter of

█/Fordham Nursing & Rehabilitation 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 Fordham Center for
Rehabilitation (Facility):

Liana Rutenberg-Diaz, Administrator

For Resident █ (Appellant):

Pro Se

The Facility in Bronx County proposes to discharge the Appellant nursing home resident involuntarily to the █ (Shelter System). The Facility states that grounds exist for the discharge because the Appellant's condition has improved sufficiently so that she no longer requires care in a nursing home. The Appellant argues that she needs to remain in the Facility due to ongoing medical and mental health care needs and that the Shelter System would be an inappropriate discharge location. After considering the record, the ALJ finds that the Appellant's condition has improved so that she no longer requires care in a skilled nursing facility and that the Facility has proposed an appropriate discharge to the Shelter System.

I. Background

Under Title 10 NYCRR § 415.3(h), a nursing home resident holds certain rights concerning 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 [REDACTED] Shelter at [REDACTED], [REDACTED] as the discharge location. The Appellant then requested the hearing that took place at the Facility in the Bronx on July 10 and September 26, 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 her own behalf. The Facility presented as witnesses Medical Director Amir Saxena, M.D., Social Worker Mindy Negron, Physical Therapist Purnima Bathla, Occupational Therapist Johanna Romano, Liezl Lim, R.N. and Gemma Malanao, R.N. The ALJ received the Notice of Hearing into the record as ALJ Exhibit I. The Appellant offered into the record two documents at the hearing:

- A Admission Record,
- B Fax Request for Further Hearing.

The Facility offered 11 exhibits into evidence which the ALJ received into the record:

- 1 Discharge Summary,
- 2 Discharge Notice,

3 Social Worker Notes,
4 Physical Therapy Discharge Summary,
5 Occupational Therapy Discharge Summary,
6 Physician Note,
7 Progress Note [REDACTED]/17,
8 Physician Progress Note [REDACTED]/17,
9 Appellant Status Update [REDACTED] 17,
10 Progress Note [REDACTED] 17,
11 Progress Note [REDACTED]/17.

The record also included a digital audio recording from the hearing on two Compact Discs (CD). References to testimony from the recording will indicate the time in the recording at which the testimony occurs (e.g. "CDI at 12:40" means that the testimony occurs on the hearing recording for the first hearing day at 12 minutes and 40 seconds into that recording).

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 [REDACTED]-year-old Appellant lived in the Shelter System prior to entering the Facility [Ex A; CDI at 2:15].
2. The Appellant entered the Facility on [REDACTED], 2017 for medical treatment, physical therapy and occupational therapy [Ex 3].
3. The Appellant's diagnoses include [REDACTED] [REDACTED] and difficulty in [REDACTED] [Ex. A].
4. Following the first hearing day, the Appellant was hospitalized for an infection and underwent [REDACTED] [CDII at 28:19].
5. The Appellant no longer receives wound care, physical therapy or occupational therapy [CDII 45:40; Ex 4, Ex 5].
6. The Appellant has received education on wound care and self-medication [CDII 48:03, 48:45].
7. The Resident uses a [REDACTED] walker for ambulation [Ex 4].
8. The Appellant suffered a [REDACTED] prior to the second hearing day, but had completed the antibiotic regimen on the second hearing day [CDII 40:55].
9. Although the Appellant suffers from a number of chronic conditions, all interventions have ended, the Appellant no longer requires skilled nursing care and the Appellant's current medical problems can be handled in an out-patient setting [CDII 13:16-13:31].
10. The Facility attempted to find an assisted living or adult home placement for the Appellant, but those type of facilities rejected the Appellant due to her [REDACTED] age and [REDACTED] [Ex 3].
11. The Appellant will be ineligible to apply for assistive housing as long as she resides in a skilled nursing facility [Ex 3].

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 evidence demonstrates that the Appellant has completed rehabilitation and no longer needs skilled nursing care. The testimony by the Facility staff and the documentation demonstrated that the Appellant was independent and able to function in the community and was appropriate for discharge back to the Shelter System. The Appellant presented no credible medical evidence to challenge the evidence from the Facility.

The Appellant argued that she should be able to remain in the Facility due to her mental health issues, but the Facility answered that it is a skilled nursing facility rather than a mental health facility. The Appellant pointed out that the same witnesses who testified in September that the Appellant was ready to leave the Facility also testified that she was ready to leave the Facility in July, yet only a few days after the July hearing, the Appellant became hospitalized and then ██████ to ██████. The Appellant's point would certainly be worth consideration in weighing the credibility of the Facility's evidence against any medical evidence that the Appellant presented to the contrary. The Appellant failed, however, to present any contradictory medical evidence, even though the Appellant has now had four months since the first hearing day to present any contradictory evidence.

The Appellant argued that her conditions precluded discharge to a shelter, but the Appellant suffered from these same conditions when she lived previously in the Shelter System. The Appellant argued that she became sick in the Shelter System and could become sick again if

she returns to the System. The Facility answered that the Appellant suffers from a number of medical conditions which can cause complications, such as infections, in any setting. The Facility also argued that the Appellant is non-compliant with care.

The Facility attempted to place the Appellant in a number of other settings such as adult homes or assisted living, but such facilities rejected the Appellant. The Facility also pointed out that the Appellant remains ineligible to apply for assisted housing as long as she remains in a skilled nursing facility. The Facility contends that at Susan's Place, the Appellant can receive case management services to assist in efforts toward obtaining housing placement and she will be eligible for housing vouchers [Ex 3]. The ALJ finds the discharge to the Shelter System appropriate.

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.
3. The discharge may proceed as soon as the Shelter System indicates that it can accept the Appellant.

Dated: Menands, New York
November 8, 2017



James F. Horan
Administrative Law Judge

To:

Liana Rutenberg-Diaz, Administrator
Fordham Nursing & Rehabilitation
2678 Kingsbridge Terrace
Bronx, NY 10463

Resident ■
c/o Fordham Nursing & Rehabilitation
2678 Kingsbridge Terrace
Bronx, NY 10463