



Department
of Health

ANDREW M. CUOMO
Governor

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

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

September 22, 2017

CERTIFIED MAIL/RETURN RECEIPT

Adrienne Mason, DSW
Marquis Rehab & Nursing
2 Medical Plaza
Glen Cove, New York 11542

██████████
c/o Marquis Rehab & Nursing
2 Medical Plaza
Glen Cove, New York 11542

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:
Enclosure

following individuals were present for the hearing: [REDACTED], Resident; Michele J. Petherick, Director of Rehabilitation; Carol Zinno, Director of Nursing; Kathleen Ciarletta, Assistant Director of Nursing; and Adrienne Mason, LMSW, Director of Social Work.

STATEMENT OF THE CASE

The Facility issued a determination proposing to discharge the Resident effective [REDACTED] 2017. 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 was a placement determined by the [REDACTED] Department of Social Services ("DSS"). 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], 2015, with the diagnosis of [REDACTED] [REDACTED]. At that time, he was unable to ambulate independently and required assistance with all activities of daily living. (Facility Ex. 1; Recording @ 2:45).

2. The Resident completed a program of physical therapy. He now ambulates independently and can perform all activities of daily living. (Facility Ex. 2; Recording @ 5:15).

3. The Facility's interdisciplinary care team determined that the Resident no longer required skilled nursing services and could safely be discharged. (Facility Ex. 2; Recording @ 6:50).

4. The Resident's attending physician determined that the Resident was medically stable and no longer required the skilled nursing services provided by the Facility. (Facility Ex. 1).

5. The Resident previously resided in a shelter. He currently has no source of income so he is unable to rent an apartment or other type of housing, and he has no needs which would warrant his residency in an assisted living facility. (Recording @ 6:30).

6. The Facility's discharge plan is to submit a referral form to the [REDACTED] [REDACTED] DSS, to prepare a discharge folder with instructions and medications, and to assist the Resident with transportation to the location designated by [REDACTED] [REDACTED] DSS. (Recording @ 8:20)

7. On [REDACTED] 2017, the Facility issued a discharge notice to the Resident. (Facility Ex. 3).

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 Facility established through testimony and documents that there is no reason for the Resident to remain in a skilled nursing facility. The Resident is medically stable and can independently perform all activities of daily living. The Facility explored placement alternatives, and the only available option was the [REDACTED] DSS because the Resident has no source of income and no disability.

The Resident stated that he understood that he no longer required placement in a skilled nursing facility, but he asked for some additional time before his discharge from the Facility, indicating that he may be able to find someplace to reside in the interim. Based upon the evidence produced at the hearing, I determined on the record that the Resident no longer needed to reside in a skilled nursing facility, but that the effective date of the discharge should be stayed until [REDACTED] 2017.

DECISION AND ORDER

1. The Facility is authorized to discharge the Resident in accordance with its discharge plan on or after [REDACTED], 2017.

2. This decision shall be effective upon service on the parties by 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
September 22, 2017**



WILLIAM J. LYNCH
Administrative Law Judge