



Department of Health

ANDREW M. CUOMO
Governor

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

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

October 31, 2017

CERTIFIED MAIL/RETURN RECEIPT

Inea Gogus, Director of Social Work
Ditmus Park Care Center
2107 Ditmus Avenue
Brooklyn, New York 11226

[REDACTED]
c/o Ditmus Park Care Center
2107 Ditmus Avenue
Brooklyn, New York 11226

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 an Appeal, pursuant to
10 NYCRR § 415.3, by

[REDACTED]

Appellant,

from a determination by

DITMAS PARK REHAB & CARE CENTER,

Respondent,

to discharge him from a residential health
care facility.

DECISION

Ditmas Park Rehab & Care Center ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED] [REDACTED] 2017, to [REDACTED] [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On October 26, 2017, a hearing 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 in 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.

Evidence was received and witnesses were examined. An audio recording of the proceeding was made. The hearing was held at the

Facility located at 2107 Ditmas Avenue, Brooklyn, New York. The following individuals were present for the hearing: [REDACTED], Resident; Inna Gogus, Director of Social Work; Yocheved Friedman, Social Worker; Mary Grace, R.N., Director of Nursing; Marie Desouisseau, R.N., Charge Nurse; Geraldine Grecie, R.N., Assistant Director of Nursing; Sherryle Sanchez, Rehabilitation; Mendel Rottenberg, Administrator.

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 [REDACTED] Assisted Living, [REDACTED]. 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] [REDACTED] 2016, for rehabilitation following [REDACTED] of [REDACTED] with the application of a [REDACTED] on his [REDACTED]. (Facility 2; Recording @ 3:25).

2. The Resident's [REDACTED] ulcer has been treated exclusively by a physician that he visits outside the nursing home in the community. (Facility 2; Recording @ 5:75).

3. The Resident completed a program of physical therapy, and he now ambulates independently with a [REDACTED]. He can perform all

activities of daily living. (Facility Ex. 2; Recording @ 2:50, 6:50).

4. The Resident can receive this same care as an outpatient and can manage his own medications. (Recording @ 12:25).

5. 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 @ 15:00).

6. The Resident's attending physician determined that the Resident was medically stable and agreed with the discharge plan. (Facility Ex. 1).

7. On [REDACTED], 2017, the Facility issued a discharge notice to the Resident which proposes discharge to [REDACTED]. (Facility Ex. 2).

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 and that the Resident's medical conditions can be managed on an outpatient basis. After completing a program of rehabilitation, the Resident can independently perform all activities of daily living.

The Resident told the Facility Social Worker that he wanted to live in the [REDACTED]. Therefore, the Facility explored placement alternatives there, and [REDACTED] [REDACTED] [REDACTED] [REDACTED] has agreed to accept him as a resident. The Facility's discharge plan includes providing medications, follow-up instructions and transportation.

The Resident did not claim that he still required skilled nursing services. Although he testified regarding his attempt to find a subsidized apartment with the assistance of his family, he stated that he has encountered waiting lists which are three years long.

Based upon the evidence produced at the hearing, I find that the Resident no longer needs to reside in a skilled nursing facility and that he can obtain any required follow-up medical care on an outpatient basis while living at [REDACTED].

DECISION AND ORDER

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

2. 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
October 30, 2017



WILLIAM J. LYNCH
Administrative Law Judge