



**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 22, 2017

CERTIFIED MAIL/RETURN RECEIPT

Imeka Wedderburn, SW
Bridge View Nursing Home
143 10 20th Avenue
Whitestone, New York 11357

██████████
c/o Bridge View Nursing Home
143 10 20th Avenue
Whitestone, New York 11357

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: ISM
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

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 In the Matter of an Appeal, pursuant to :
 10 NYCRR § 415.3, by :
 :
 [REDACTED] :
 :
 Appellant, :
 :
 from a determination by : DECISION
 :
 BRIDGE VIEW NURSING HOME, :
 :
 Respondent, :
 :
 to discharge him from a residential health :
 care facility. :
 -----X

Bridge View Nursing Home ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED] [REDACTED], 2017, to [REDACTED] [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On November 16, 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 143-10 20th Avenue, Whitestone, New York. The following individuals were present for the hearing: [REDACTED], Resident; Ineka Wedderburn, Director of Social Work; Nilda Murray, R.N., Assistant Director of Nursing; Louella Natinbin, R.N., Unit Manager; Juie Mesvani, Physical Therapist; Lorraine Rosado, Business Office Manager; Carlton Williams, Administrator.

STATEMENT OF THE CASE

The Facility issued a determination proposing to discharge the Resident effective [REDACTED] 2017. The first 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 second reason was that the Resident failed to pay for his stay at the Facility. The proposed discharge location was the [REDACTED] Shelter in [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] 2017, for [REDACTED] term rehabilitation. (Facility 2; Recording @ 2:30).

2. The Resident completed a program of physical therapy on [REDACTED] [REDACTED] 2017, and he now ambulates independently. He can perform all activities of daily living. (Facility Ex. 2; Recording @ 9:45).

3. The Resident can receive care for his chronic medical conditions as an outpatient and can manage his own medications. (Recording @ 12:00).

4. 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 @ 16:30).

5. The Resident's attending physician determined that the Resident was medically stable and agreed with the discharge plan. (Facility Ex. 1; Recording @ 12:00).

6. The Resident receives Social Security Disability benefits in the monthly amount of \$ [REDACTED]. A portion of the cost for his stay at the Facility is being paid by Medicaid, but the Resident is required to pay a Net Available Monthly Income ("NAMI") of \$ [REDACTED]. The Resident has made no NAMI payment to the Facility and currently owes \$ [REDACTED].

7. On [REDACTED] [REDACTED], 2017, the Facility issued a discharge notice to the Resident which proposes discharge to the [REDACTED] Shelter in [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 Facility also alleges that the Resident's discharge is permissible pursuant to 10 NYCRR 415(h)(1)(i)(b), which permits the transfer of a resident when:

[T]he resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third party insurance) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility the facility may charge a resident only allowable charges under Medicaid.

The Resident did not dispute that he failed to pay the NAMI amount established by the Medical Assistance Program, and he has not appealed the DSS determinations that established the NAMI amount. Instead, Appellant alleged that he has no savings because he spent

his Social Security Income on other items such as the tuition of his children who are in college.

The Facility social worker stated that efforts had been made repeatedly to engage the Resident in discharge planning, but the Resident had refused until approximately one week before the hearing. Discharge to the [REDACTED] Shelter was proposed because a resident's cooperation is needed to pursue any other option. The Resident did not offer evidence of any need to continue residing in a skilled nursing facility, but he stated that he will not go to the [REDACTED] shelter.


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 in the community. The Resident may voluntarily accept discharge to any alternative placement identified in the interim, but he may be discharged to the [REDACTED] Shelter effective [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 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
November 21, 2017



WILLIAM J. LYNCH
Administrative Law Judge