



Department of Health

ANDREW M. CUOMO
Governor

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

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

June 8, 2018

CERTIFIED MAIL/RETURN RECEIPT

Barbara Stegun Phair, Esq.
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Lake Success, New York 11042

Sharmin Foster, DSW
Bay Park Center for Nursing & Rehabilitation
801 Co-Op Boulevard
Bronx, New York 10475

[REDACTED]
Bay Park Center for Nursing
& Rehabilitation
801 Co Op Boulevard
Bronx, New York 10475

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 /cac
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
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

Bay Park Center for Nursing & Rehabilitation,

Respondent,

to discharge him from a residential health care facility.

COPY

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Bay Park Center for Nursing & Rehabilitation
801 Co-op City Boulevard
Bronx, New York 10475

Hearing Date:

May 30, 2018

Parties:

Bay Park Center for Nursing & Rehabilitation
By: Barbara Phair, Esq.
Abrams, Fensterman, *et al.*

[REDACTED]

Pro Se

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as Bay Park Center for Nursing & Rehabilitation (“Respondent” or “Facility”) is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(h). Respondent determined to discharge [REDACTED] (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(a)(2) which provides, in pertinent part:

- (a) the resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident’s designated representative, determines that:
 - ...
 - (2) 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.

Appellant appealed the discharge determination to the New York State Department of Health, and a hearing on that appeal was held. Pursuant to 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

A digital recording of the hearing was made part of the record. Appellant appeared at the hearing and testified on his own behalf. Natasha Davis–Transition Specialist with the New York Association for Independent Living (“NYAIL”) and Carol Hitz–Social Worker with United Health Care (“UHC”) testified for Appellant. Barbara Phair, Facility’s attorney, called and examined the following witnesses for Respondent: Mandeep K. Singh, M.D., R.N.–Attending Physician, Stephen Schink, R.N.–Nurse Manager, Joe Graziano–Director of Rehabilitation, Joan

Bryan–Social Worker, and Sharmin Anderson-Foster–Director of Social Work. Also present at the hearing were: Mohanie Persaud–Respondent’s Assistant Administrator, and Eileen Hermance–UHC Manager.

The following documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ, Facility, and Resident Exhibits:

ALJ:

- I: Notice of Hearing and attached Facility Discharge Notice

Facility:

- 1: Physician note
- 2: Social Services notes
- 3: Shelter information from internet
- 4: Out on Pass sheets for [REDACTED]

Resident:

- A: Resident’s self-created notes re discharge

ISSUE

Has Bay Park Center for Nursing & Rehabilitation established that the transfer is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (“T”) of witnesses and exhibits (“Ex”) found persuasive in arriving at a particular finding.

1. Respondent, Bay Park Center for Nursing & Rehabilitation (“Bay Park”), is a residential health care facility located in Bronx, New York. (Ex I)
2. On [REDACTED] 2017, Appellant, [REDACTED] ag [REDACTED] was admitted to the Facility from [REDACTED] Hospital Medical Center for [REDACTED] term rehabilitation. Appellant completed occupational and physical therapy, he ambulates independently with [REDACTED] he is independent in his ADLs (activities of daily living), he goes out on pass independently, and his condition is stable.

Appellant's medical conditions and follow-up medical care, including a sleep study, can be addressed in the community. (Ex 1; Ex 2; Ex 4; T Singh, Graziano, Schink, Bryan, Anderson-Foster, Appellant)

3. By notice dated [REDACTED] 2018, Respondent advised Appellant that it had determined to discharge him on the grounds that his health has improved sufficiently so that he no longer needs the services provided by the Facility ("2018 discharge"). (Ex I)

4. Respondent proposes to discharge Appellant to the [REDACTED] Shelter ("Shelter") located at [REDACTED] (Ex I)

5. It is the professional opinion of Appellant's caregivers at the Facility, including Appellant's Facility attending physician, that discharge to the Shelter is appropriate for Appellant. The Shelter will provide Appellant assistance with acquiring permanent housing, public assistance, and job placement, as well as medical follow-up and substance abuse services if needed. (Ex 1; Ex 2; Ex 3; T Singh, Graziano, Schink, Bryan, Anderson-Foster)

6. Appellant has been working with [REDACTED] [REDACTED], since [REDACTED] 2018. [REDACTED] is currently assisting Appellant in securing permanent housing and other services in the community. If discharged to the Shelter, [REDACTED] will assist Appellant in securing permanent housing and employment, applying for income such as public assistance or Social Security Disability, and other services he might need in the community. (Ex 2; T Davis)

7. Appellant does not believe the Shelter is appropriate or safe for him, and Ms. Hitz concurs. UHC authorized continued custodial care for Appellant at the Facility until [REDACTED] 2018, however, at any time including subsequent to [REDACTED] 2018, UHC can seek recoupment of

¹ [REDACTED] works with Nursing Home residents attempting to transition to living in the community. [REDACTED] works with Shelter residents and others living in the community.

already-paid funds if UHC determines that Appellant was not actually eligible for custodial care in the Facility. (T Appellant, Hitz)

8. Appellant has remained at Bay Park pending the outcome of this proceeding.

DISCUSSION

In [REDACTED] 2017, Respondent sought to discharge Appellant to the Shelter on the grounds of sufficient improvement of health (“2017 discharge”)³. Appellant appealed the 2017 discharge, a hearing was held before the same ALJ assigned to the 2018 discharge, and the ALJ rendered a decision which denied Appellant’s appeal and authorized Respondent to discharge Appellant in accordance with its [REDACTED] 2017 discharge notice. Upon being assigned the 2018 discharge, the ALJ learned that Respondent, in an effort to give Appellant additional time to secure permanent housing in the community, did not discharge Appellant. On consent of the parties, a hearing regarding the 2018 discharge was held before the same ALJ who rendered the 2017 discharge decision.

At the hearing, Appellant agreed with Respondent’s determination that he no longer requires skilled care and that his medical care and treatment can be obtained in the community on an out-patient basis. With such acknowledgement by Appellant, the only issue left for this decision is whether the discharge location, *i.e.*, the Shelter, is an appropriate discharge plan.

Respondent, Appellant, and NYAIL made numerous efforts to secure community housing including Assisted Living (“AL”) for Appellant. The Shelter was identified as a last resort. Ms. Bryan, Ms. Anderson-Foster, and Ms. Davis concur that there are greater opportunities and more resources for securing community housing for Shelter residents than for nursing home residents.

It is undisputed that AL won’t accept Appellant because he doesn’t have an income. Appellant testified that his “Catch 22” is that he cannot have income unless he works and he

³ *The grounds for discharge and the discharge location are identical in the 2017 discharge and 2018 discharge.*

can't work because he is in the Facility. Appellant strongly believes that the Shelter is not a safe discharge for him, and he is concerned that he will not be "a priority" in the Shelter system due to his age and abilities. While Ms. Hitz testified that she does not believe the Shelter is a safe discharge for Appellant because in her opinion the Shelter system is not structured, she has lost track of Shelter residents, and it is difficult to coordinate with and reach Shelter staff, she did acknowledge that Appellant, who "has full capacity," would be capable of keeping in touch with her from the Shelter. Also, BILS will work with Appellant when he is in the Shelter system. Finally, Appellant's concern that he would not have a place to store his belongings such as his clothing, books, and documents when he is residing in the Shelter was addressed by Ms. Anderson-Foster's representation that the Facility would hold his belongings for 30 days, possibly a little longer if Appellant makes such a request and keeps in touch with Respondent after discharge.

CONCLUSION

Sufficient improvement of health is an explicitly authorized reason for discharge. Appellant has agreed that his health has improved sufficiently so that he no longer needs the services provided by the facility, and Respondent has proven that the Shelter is an appropriate discharge plan. Once in the Shelter system, Appellant will have a case manager who will assist him with seeking medical, housing, income, and other services. Appellant will be transported to the Shelter by ambulette; he will be discharged with a new [REDACTED] and if needed, referrals/prescriptions/appointments for care and treatment.

DECISION

I find that the transfer is necessary and the discharge plan is appropriate.

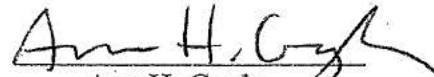
The appeal by Appellant is therefore DENIED.

Bay Park

Respondent, Bay Park Center for Nursing & Rehabilitation, is authorized to discharge Appellant, [REDACTED], in accordance with its [REDACTED] 2018 discharge notice.

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: New York, New York
June 8, 2018


Ann H. Gayle
Administrative Law Judge

TO: [REDACTED]
c/o Bay Park Center for Nursing & Rehabilitation
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