



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

July 10, 2018

CERTIFIED MAIL/RETURN RECEIPT

Cristina Osorio, MSW
Highland Care Center
91 31 175th Street
Jamaica, New York 11432

[REDACTED]
C/o Highland Care Center
91 31 175th Street
Jamaica, New York 11432

RE: In the Matter of [REDACTED] – Discharge Appeal

Dear Parties:

Enclosed please find the Interim 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,

COPY

from a determination by

DECISION

HIGHLAND CARE CENTER

Respondent,

to discharge him from a residential health care facility.

Hearing Before:

Jean T. Carney
Administrative Law Judge

Held at:

Highland Care Center
91-31 175th Street
Jamaica, New York 11432

Hearing Date:

June 19, 2018

Parties:

Highland Care Center
By: Cristina Osorio, MSW

[REDACTED]

Pro se Appellant

JURISDICTION

By notice dated [REDACTED] 2018, Highland Care Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) §415.3(h).

HEARING RECORD

Facility Exhibits: 1 – Physical Therapy Discharge Summary
 2 – Notice of Discharge
 3 - Progress Notes

Facility Witnesses: Maurice Gayatgay, Physical Therapist
 Althea Andrade, Registered Nurse, Unit Manager
 Sheneeza Elgin, Social Worker

Appellant’s Exhibits: None

Appellant’s Witness: Appellant testified in his own behalf

ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is [REDACTED] year-old male who was admitted to the Facility on [REDACTED] 2018 with relevant diagnoses of [REDACTED] [REDACTED] (Exhibit 3).

2. Upon admission to the Facility, the Appellant required skilled nursing care for rehabilitation due to [REDACTED] which prevented him from [REDACTED] on his [REDACTED] extremity. (Hearing testimony of Maurice Gayatgay @3:53).

3. The Appellant was discharged from physical therapy when he could perform functional transfers, bed mobility tasks, safely ambulate on even and uneven surfaces using a rolling walker, ascend and descend stairs, and sufficiently balance with minimal risk for falling. (Exhibit 1).

4. Currently, the Appellant is prescribed [REDACTED]

[REDACTED]

(Hearing testimony of Althea Andrade @8:44)

5. The Appellant has been medically cleared for discharge, and arrangements have been made to ensure he can continue to receive counseling and [REDACTED] treatments. (Hearing testimony of Althea Andrade @10:19 and @15:50; Exhibit 3).

6. Prior to leaving the Facility, staff will ensure that a pharmacy and primary care physician are in place to safely transition the Appellant into the community and maintain his current medications. (Hearing testimony of Sheneeza Elgin @24:57).

7. Prior to applying to the shelter system, Facility staff referred Appellant to several assisted living facilities; but he was not accepted due to his reliance on public assistance, and his history of [REDACTED] (Hearing testimony of Sheneeza Elgin @18:00).

8. The Appellant has no family or support system in New York. He is familiar with the shelter system, having lived in a shelter before his current admission to the Facility. (Hearing testimony of Appellant @32:14 and 28:14).

APPLICABLE LAW

A residential health care facility, also referred to as a nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. (Public Health Law §§2801[2] and [3]; 10 NYCRR §415.2[k]).

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 alleges 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.

Under the hearing procedures at Title 10 NYCRR §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge is necessary, and the plan is appropriate. Under the New York State Administrative Procedures Act (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 conclusion or fact; less than preponderance of 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[1984]).

DISCUSSION

The Facility has shown that the Appellant's health has improved sufficiently so that he no longer requires skilled nursing care, and may be discharged. Upon admittance, the Appellant required rehabilitation services resulting from a [REDACTED]. He was successfully discharged from physical therapy on [REDACTED], 2018, after achieving his maximum potential. (Exhibit 1) The Appellant has

demonstrated the ability to safely transition from lying, to sitting, to standing. He can safely walk on uneven surfaces, ascend and descend stairs, and balance independently. The Appellant admits that, aside from occasionally forgetting to take his medication, he does not need skilled nursing as provided by the Facility. (Hearing testimonies of Maurice Gayatgay @4:29 and Appellant @45:38; Exhibit 3). Accordingly, the Facility has proven that the Appellant's health has improved sufficiently, and he no longer requires the services of a skilled nursing facility.

Next, we turn to the question of whether the discharge plan is appropriate. The Appellant objects to being discharged to the shelter system. However, his history of [REDACTED] and lack of income present significant barriers to his obtaining alternate housing. The Appellant fears that discharge to the shelter [REDACTED] will trigger a [REDACTED] (Hearing testimony of Appellant @28:14). While this is a valid concern, the record reflects that discharge to the shelter is the only viable option. The Appellant has no community resources or family who can provide housing, and efforts to transfer him to an assisted living facility have failed based on his history of [REDACTED] and dependence on public assistance. At the shelter the Appellant can continue his current [REDACTED] treatments and counseling. Additionally, the Facility has agreed to assist the Appellant in obtaining a primary care physician, pharmacy, and has been fully instructed in how to administer his [REDACTED] and other medications prior to his discharge. (Hearing testimony of Sheneeza Elgin @18:00, @22:15 and @24:55; Exhibit 1).

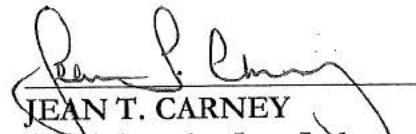
The Facility has proven that the Appellant is no longer in need of skilled nursing care. A discharge is appropriate because the Appellant's health has improved sufficiently so the Appellant no longer needs the services provided by the Facility. Under these circumstances, discharge to the shelter [REDACTED] is appropriate.

DECISION

Highland Care Center has established that its determination to discharge the Appellant was correct, and that transfer to the shelter system is appropriate.

1. Highland Care Center is authorized to discharge the Appellant in accordance with its discharge plan dated [REDACTED] 2018.
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.

**DATED: Albany, New York
July 9, 2018**


JEAN T. CARNEY
Administrative Law Judge

TO: [REDACTED]
C/O Highland Care Center
91-31 175th Street
Jamaica, New York 11432

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