



**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 25, 2018

CERTIFIED MAIL/RETURN RECEIPT

Jacqueline Reid, SW
Schaffer Extended Care Center
16 Guion Place
New Rochelle, New York 10802

[REDACTED]
C/o Schaffer Extended Care Center
16 Guion Place
New Rochelle, New York 10802

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: 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

SCHAFFER EXTENDED CARE CENTER

to discharge him from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Schaffer Extended Care Center
16 Guion Place
New Rochelle, New York 10802

Date: June 28, 2018

Parties:

[REDACTED]
By: Pro Se

Schaffer Extended Care Center
By: Jacqueline Reid, Social Work Manager

COPY

DECISION

JURISDICTION

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

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. An interpreter provided translation services for [REDACTED] and a reporting service made a transcript of the proceeding.

HEARING RECORD

ALJ Exhibits: 1 – Letter with Notice of Hearing and attached Notice of Discharge [REDACTED] 8)

Facility Exhibits: 1 – Physical Therapy Flowsheet [REDACTED] 18)
2 – Nursing Progress Note [REDACTED] 18)
3 – Significant Change Form [REDACTED] 18)
4 – Physical Therapy Initial Assessment [REDACTED] 18)
5 – Summary of Patient's Admission [REDACTED] 18)
6 – Functional Status [REDACTED] 18)

Appellant Exhibits: A – Discharge Instructions, Phelps Memorial Hospital Center [REDACTED] 18)

Facility Witnesses: Will Siegel, Rehabilitation Department Manager
In Jung Lifrieri, Clinical Nutrition Manager
Jacqueline Reid, Social Work Manager
Lovelyamma Varghese, Director of Nursing

Appellant Witnesses: Appellant testified on his own behalf

FINDINGS OF FACT

1. The Appellant is a [REDACTED] year-old male who was admitted to the Facility on [REDACTED] 2018. (Facility Ex. 2.)
2. The Appellant had a [REDACTED] in [REDACTED] 2017. He was hospitalized on [REDACTED] 2018, with complaints of [REDACTED] pain. The Appellant was then admitted to the Facility for further rehabilitation. (Facility Exs. 2, 4-5.)
3. The Appellant is alert and oriented and able to communicate all his needs. (Facility Exs. 2, 5.)
4. The Appellant received physical therapy (PT) services from the Facility. (Facility Ex. 4.)
5. At the time of his initial PT assessment on [REDACTED] 2018, the Appellant needed supervision with ambulation, transfer, and bed mobility. He was not steady but was able to stabilize without staff assistance. (Facility Ex. 4.)
6. On [REDACTED] 2018, the Appellant ambulated [REDACTED] feet independently without any assistive device. (Facility Ex. 1.)
7. In [REDACTED] 2018, the Appellant had completed PT and was still ambulating independently without any assistive device. (Facility Ex. 5; Testimony [T.] Reid, Siegel.)
8. On [REDACTED] 2018, the Facility issued a discharge notice to the Resident which proposed discharge to [REDACTED] Home for Adults [REDACTED] (ALJ Ex. 1.)
9. The Notice of Discharge states that the Resident's interdisciplinary team, in conjunction with the Resident's primary physician, had determined that the Resident would be discharged because the Resident's health has improved sufficiently and the Resident no longer requires the services of a skilled nursing facility. (ALJ Ex. 1.)

10. The Resident timely appealed the Facility's discharge determination and proposed discharge location.

11. The Resident has remained at the Facility during the pendency of the appeal and has only been receiving custodial care since [REDACTED] 2018. (T. Reid, Varghese.)

ISSUES

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

APPLICABLE LAW

A residential health care facility, also referred to in the Department of Health Rules and Regulations as a nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. (PHL § 2801[2][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 alleged that the Appellant'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 10 NYCRR 415.3(h)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate. Under 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. It is less than a preponderance of evidence but more than mere surmise, conjecture or speculation, and it constitutes a rational basis for a decision. (Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3d Dept. 1984], appeal dismissed 63 N.Y.2d 649.)

DISCUSSION

Reason for Discharge

The Facility has determined that the Appellant's health has improved sufficiently and the Appellant no longer requires the services of a skilled nursing facility. (ALJ Ex. 1.)

The Appellant was admitted to the Facility on [REDACTED] 2018, for rehabilitation. He had an initial PT assessment on [REDACTED] 2018, and began receiving therapy thereafter. At the time of the initial assessment, the Appellant needed supervision with ambulation, transfer, and bed mobility. He was not steady but was able to stabilize without staff assistance. (Facility Ex. 4.) Just a few days later, on [REDACTED] 2018, the Appellant ambulated [REDACTED] feet independently without any assistive device. (Facility Ex. 1.) By the first half of [REDACTED] 2018, the Appellant had completed PT and was still ambulating independently without any assistive device. (Facility Ex. 5; Testimony [T.] Reid, Siegel.) The Appellant has only received custodial care at the Facility since [REDACTED] 2018, and the Appellant does not need any assistance with his activities of daily living. (Facility Ex. 6; T. Reid, Siegel, Varghese.)

Ms. Reid, the Social Work Manager, testified that there was an approximate [REDACTED]-month gap in time between the Appellant completing PT and the Facility issuing the Notice of Discharge because the Facility has been attempting to work with the Appellant to find him a discharge location; however, the Appellant has continuously refused to go to places that the Facility identified as appropriate and that were willing to accept the Appellant. (T. Reid.)

Appellant is able to ambulate independently without assistive devices. During the hearing, he stood up and walked with ease, once leaving to go from the hearing room on the first floor to his room on an upper floor to retrieve paperwork and then returning shortly thereafter. The Appellant, although contesting that he was ready for discharge, testified that since his [REDACTED] died he has "never needed anything from anybody". [REDACTED] Upon being asked multiple times about his medical needs, the Appellant failed to respond directly and then stated that he had nothing to say about his medical care. [REDACTED]

The Appellant presented discharge instructions from a hospital admission prior to his admission to the Facility and the course of therapy he received at the Facility. (Resident Ex. A.) This document is not probative of the Appellant's current health.

The evidence supports that Appellant's health has improved sufficiently such that he no longer needs the services of a skilled nursing facility.

Discharge Location

The Facility has proposed discharging the Appellant to [REDACTED] Home for Adults in [REDACTED] (ALJ Ex. I.) Ms. Reid testified that the discharge location is [REDACTED] [REDACTED] from the Facility and that she accompanied the Appellant on a tour of the location. (T. Reid.) She further testified that the Appellant told her he does not want to go there because he believes it is a place for drug dealers. (T. Reid.) [REDACTED] has a spot available for the Appellant and is willing to accept him as long as he is willing to go there. (T. Reid.)

When asked directly what his concerns were regarding the discharge location, the Appellant stated that all the people there are drug addicts and that when he went there the people

asked him for money and cigarettes. [REDACTED] The Appellant also stated that there were 40 people right around the corner that were smoking, doing drugs, and gambling. (T. Serratto.)

Ms. Reid testified extensively as to the options the Facility explored for discharge, including assisted living, adult homes, nursing homes, residences, and congregate living. (T. Reid.) She further testified as to the reasons that Appellant was not accepted at some of the locations and as to Appellant's refusal to go to the places where he was accepted. (T. Reid.)

The Appellant does not need skilled nursing services. There was no indication at the hearing that the Appellant has any needs that cannot be met at [REDACTED] Home for Adults. The Facility has explored several options for a discharge location and has proven that its plan to discharge the Appellant to [REDACTED] Home for Adults is appropriate.

DECISION


Schaffer Extended Care Center has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Schaffer Extended Care Center for Rehabilitation and Nursing Care is authorized to discharge the Appellant in accordance with its discharge plan on or after [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 24, 2018


Tina M. Champion
Administrative Law Judge

TO:


c/o Schaffer Extended Care Center
16 Guion Place
New Rochelle, New York 10802

Jacqueline Reid, SW
Schaffer Extended Care Center
16 Guion Place
New Rochelle, New York 10802