



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

September 7, 2018

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o The Grand Rehabilitation & Nursing
9 Reservoir Road
Pawling, New York 12564

Yosef Spierer, NHA
The Grand Rehabilitation & Nursing
9 Reservoir Road
Pawling, New York 12564

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:cmg
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of an Appeal, pursuant to
10 NYCRR 415.3, by



Appellant,

from a determination by

THE GRAND REHABILITATION
AND NURSING AT PAWLING

to discharge him from a residential health care facility.

COPY

DECISION

Before: Tina M. Champion
Administrative Law Judge

Held at: The Grand Rehabilitation and Nursing at Pawling
9 Reservoir Road
Pawling, New York 12564

Date: July 31, 2018

Parties: 
By: pro se

The Grand Rehabilitation and Nursing at Pawling
By: Yosef Spierer, Administrator

JURISDICTION

By notice dated [REDACTED] 2018, The Grand Rehabilitation and Nursing at Pawling (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 10 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 audio recording of the proceeding was made.

HEARING RECORD

- ALJ Exhibits: 1 – Notice of Hearing and attached Transfer/Discharge Notice [REDACTED] (18)
- Facility Exhibits: 1 – Admission Record, Physician's Progress Notes, Discharge Instructions (various dates)
- Appellant Exhibits: None
- Facility Witnesses: Yosef Spierer, Administrator
Amandeep Singh, Nurse Practitioner
Donna Schiehl, Director of Nursing
Divya Siddam, Director of Rehabilitation
Lindsay Farrelly, Social Worker
- Appellant Witnesses: Appellant testified on his own behalf
[REDACTED], Appellant's [REDACTED] (unsworn, by telephone)

FINDINGS OF FACT

1. The Appellant is a [REDACTED] year-old male who was admitted to the Facility on [REDACTED] 2014. (Facility Ex. 1.)
2. The Appellant's primary diagnosis is [REDACTED] for which he receives [REDACTED] (Facility Ex. 1; T. Singh.)
3. The Appellant is aware of an appropriate diet to aide in managing his [REDACTED] but does not always comply. (T. Singh, Schiehsl.)
4. The Appellant is prescribed a multitude of oral medications for other various diagnoses. (Facility Ex. 1.)
5. The Appellant received therapy at the Facility for a period of time after his admission in 2014 but was soon after discharged from those services and has not received them in recent years. (T. Siddam.)
6. The Appellant is ambulatory and can walk functional distances with a [REDACTED] but prefers to use a wheelchair. (T. Siddam.)
7. On [REDACTED] 2018, the Facility issued a Transfer and Discharge Notice to the Appellant that proposed discharge to a homeless shelter at [REDACTED] (ALJ Ex. I.)
8. The Transfer and Discharge Notice states that the Appellant is being discharged because his health has improved sufficiently that he is able to "succeed in a lesser level of care such as an assisted living facility or emergency shelter environment." (ALJ Ex. I.)
9. The Transfer and Discharge Notice also states that the Appellant is being discharged because his health and safety or the health and safety of others would otherwise be endangered as he is [REDACTED] (ALJ Ex. I.)

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

11. The Appellant has remained at the Facility during the pendency of the appeal.

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.

The Facility has also alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415(h)(1)(i)(a)(3) and (4), which state that a resident may be transferred when the safety or health of individuals in the facility is endangered.

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. I.) It also determined that the Appellant's health or safety or the health or safety of others is endangered by the Appellant remaining at the Facility. (ALJ Ex. I.)

The Appellant was admitted to the Facility on [REDACTED] 2014, with a primary diagnosis of [REDACTED] (Facility Ex. 1; T. Singh.) He receives [REDACTED] for his [REDACTED] and is admittedly noncompliant with dietary directives. (T. Singh, Schiehl [REDACTED]) The Director of Rehabilitation testified that the Appellant initially received therapy at the Facility for a period of time after his admission in 2014 but was soon after discharged from those services and has not received them in recent years. (T. Siddam.) She further testified that the Appellant is ambulatory and can walk functional distances with a [REDACTED] but that he prefers to use a wheelchair. (T. Siddam.)

The Appellant's Nurse Practitioner testified that the Appellant's main medical need is medication management. (T. Singh.) The Director of Nursing testified that she taught the Appellant how to administer his own [REDACTED] and that she observed him administer the medication to himself without guidance after teaching him. (T. Schiehl.) The Appellant, however, testified

that he did not know how to [REDACTED] and did not know how much [REDACTED] he should receive. [REDACTED] Further, it was unclear from the testimony of the Director of Nursing compared to the testimony of the Appellant whether the Appellant can manage his oral medications on his own. (T. Schiehl, [REDACTED])

While the Appellant may need assistance with medication management, the evidence supports that the Appellant's health has improved sufficiently such that he no longer needs the services of a skilled nursing facility.

With respect to the Facility's determination that the Appellant be transferred because his health or safety or the health or safety of others is endangered, the Facility has failed to meet its burden of proof. The only evidence the Facility offered regarding [REDACTED] aggression and [REDACTED] to the Appellant's peers consisted of a cursory rundown of dates of instances of aggression or [REDACTED] made by the Appellant, which occurred in the earlier part of 2018. (T. Farrelly.) Further, although the Appellant's [REDACTED] corroborated the general allegation of aggression by the Appellant, the Facility offered no evidence as to how individuals were endangered due to the Appellant's behavior.

Discharge Location

The Facility has proposed discharging the Appellant to a homeless shelter at [REDACTED]

[REDACTED] (ALJ Ex. I.)

The Facility believes an adult home or assisted living setting would be the best place for the Appellant as those types of facilities can provide him with medication assistance. (T. Farrelly.) The Facility has repeatedly discussed alternative settings with the Appellant, particularly assisted living settings, and the Appellant has refused to consider moving to an assisted living facility. (T. Farrelly.) The Facility made a referral to the assisted living facility where the Appellant resided prior to being admitted to The Grand Rehabilitation and Nursing at Pawling but the Appellant was

not accepted due to concerns about his prior noncompliance with that facility's [REDACTED] policy. (T. Farrelly.) The Facility had also arranged for a visit to an assisted living facility in the geographic area where the Appellant desires to live, but the Appellant refused to go look at the facility. (T. Farrelly.) Due to his continuous rejection of assisted living facilities as an option, as of the hearing date the Facility had not identified any assisted living facilities that would accept the Appellant. (T. Farrelly.)

During the hearing it became apparent that neither the Appellant nor his [REDACTED] understood that the Appellant could receive assistance with his medications at assisted living facilities [REDACTED]

[REDACTED] Once they understood that the Appellant could receive that assistance, the Appellant indicated that he would consider such a setting.

Telephone conferences were held with the parties after the hearing on August 3, 10, and 28, 2018, in an effort to allow the parties time to reach an agreement on a discharge location given the Appellant's new understanding of his ability to receive medication assistance at assisted living facilities. The parties initially reported progress toward resolution during those telephone conferences. Specifically, the Facility identified an assisted living facility [REDACTED] which is the Appellant's preferred location to reside, that would accept him and would provide him with medication assistance. The Appellant reportedly visited and liked the Facility but ultimately refused to go there because he wanted a private room and the facility only offered a semi-private room for which payment is guaranteed by Medicaid and Social Security.

The parties have been unable to resolve this matter after being provided ample opportunity to do so. The Appellant does not need the services of a skilled nursing facility. The Facility has made several attempts to explore assisted living with the Appellant. 18 NYCRR 494.4(d)(5) provides that assisted living programs may only care for a person who "voluntarily chooses to participate in an assisted living program after being provided with sufficient information to make

an informed choice." Given the Appellant's lack of need for skilled nursing and his repeated refusals to move to an assisted living facility, the Facility has proven that its plan to discharge the Appellant to a shelter is appropriate.

DECISION

The Grand Rehabilitation and Nursing at Pawling has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. The Grand Rehabilitation and Nursing at Pawling 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
September 6, 2018



Tina M. Champion
Administrative Law Judge

TO:

[REDACTED]
c/o The Grand Rehabilitation and Nursing at Pawling
9 Reservoir Road
Pawling, New York 12564

[REDACTED]
Yosef Spierer, NHA
The Grand Rehabilitation and Nursing at Pawling
9 Reservoir Road
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