



Department of Health

ANDREW M. CUOMO
Governor

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

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

August 17, 2018

CERTIFIED MAIL/RETURN RECEIPT

Susan Rice, Nursing Home Administrator
Hopkins Center for
Rehabilitation and Healthcare
155 Dean Street
Brooklyn, New York 11217

[REDACTED]
C/o Hopkins Center for
Rehabilitation and Healthcare
155 Dean Street
Brooklyn, New York 11217

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



Appellant,

from a determination by

HOPKINS CENTER FOR
REHABILITATION AND HEALTHCARE

Respondent,

to discharge him from a residential health
care facility.

COPY

DECISION

Hearing Before:

Matthew C. Hall
Administrative Law Judge

Held at:

Hopkins Center for
Rehabilitation and Healthcare
155 Dean Street
Brooklyn, New York 11217

Hearing Date:

August 2, 2018

Parties:

Hopkins Center for
Rehabilitation and Healthcare
By: Susan Rice



Pro Se

JURISDICTION

By notice dated [REDACTED] 2018, Hopkins Center for Rehabilitation and Healthcare (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, 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).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing

Facility Exhibits: 1 - Discharge Notice [REDACTED] 18)
2 - Physical Therapy Discharge Summary
3 - Physical Therapy Evaluation
4 - Adverse Determination [REDACTED] 18)
5 - Discharge Note/Diagnosis
6 - Occupational Therapy Discharge Summary

Facility Witnesses: Susan Rice - Nursing Home Administrator
Alexander Guillera - Physical Therapist
Stephanie Jeanty - Social Worker
Cheryl Bonham - Occupational Therapist
Miro Lati, M.D. - Attending Physician
Leslianne Adams - Director of Nursing

Appellant Exhibits: A - Consultant's Opinion
B - Note from Physician [REDACTED] 18)

Appellant Witness: Appellant testified on 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

Citations in parentheses refer to testimony ("T.") of witnesses and exhibits ("Ex.") found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant is a [REDACTED]-year-old man who was admitted to the Facility on [REDACTED] 2018, for [REDACTED] rehabilitation for a [REDACTED] (Ex. 2, T. Rice).

2. The Facility determined to discharge the Appellant to a [REDACTED] shelter located at [REDACTED] [REDACTED]. (Ex. 1).

3. Upon admission to the Facility, the Appellant required skilled nursing care for rehabilitation after surgery to [REDACTED] [REDACTED]. Initially, the Appellant could not ambulate without assistance, could not transfer himself in and out of bed, and could not ascend or descend [REDACTED]. He also needed assistance

with all his Activities of Daily Living (ADLs). (Ex. 2, T. Guillera).

4. After physical and occupational therapy at the Facility, the Appellant is now able to ambulate up to 100 feet, can transfer in and out of bed, and can ascend and descend up to 15 stairs, all with only a "stand-by" assist for safety. (Ex. 4, T. Guillera, Bonham).

5. The Appellant is currently independent in his ADLs. (Ex 4., T. Bonham).

6. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending Physician, that discharge to the community, including a shelter, is appropriate for Appellant. (Ex. 6, T. Lati, Bonham).

7. By notice dated [REDACTED] 2018, the Facility determined to discharge the Appellant on [REDACTED] 2018 because the resident's "health has improved sufficiently to allow a more immediate transfer or discharge." (Ex. 1).

8. The Appellant remains at the Facility pending the outcome of this appeal.

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. Public Health Law §§ 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 Resident's discharge is permissible pursuant to 10 NYCRR § 415.3(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 necessary and 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 a 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.

DISCUSSION

Reason for Discharge

Regarding whether the resident's health improved sufficiently and the resident no longer requires the services of a skilled nursing facility:

The Appellant was admitted to the Facility on [REDACTED] 2018 for subacute rehabilitation after a [REDACTED]. The Appellant completed sub-acute rehabilitation and during his time at the Facility, his health improved to the point where he no longer needed rehabilitation.

Susan Rice, the Nursing Home Administrator, testified that, upon admission to the Facility, the Appellant was unable to walk or climb up or down stairs on his own. He needed help getting into and out of bed, and he needed assistance in his ADLs. After therapy, however, the Appellant is now able to walk over 100 feet, and climb and descend more than 15 steps with only a stand-by assist. The Appellant is also now independent in his ADLs. This

was corroborated by the Director of Nursing, Leslieanne Adams. It was also corroborated by the Appellant himself. The Appellant did not deny that he made significant improvements during his time at the Facility. He admitted that he could walk by himself and that he could tend to his ADLs alone. The Appellant did feel, however, that a few more weeks in the Facility would benefit him greatly. With surgery being planned to [REDACTED] in the near future, the Appellant felt that more time rehabilitating his [REDACTED] would provide him the strength he would need to adequately endure his [REDACTED] in a short period of time. (Ex 6, T. Appellant).

However, Dr. Milo Lati, the Facility's attending physician testified that "There is nothing left for us to do for him here, medically." He stated that the Appellant's condition has improved to a level that he no longer needs skilled nursing care and that he can appropriately be discharged to the community. When asked if the Appellant required any type of inpatient treatment, Dr. Lati stated, "No. He can be treated on an outpatient basis." (Ex. 5, T. Lati).

Accordingly, the Facility has proven that the resident's health has improved sufficiently and the resident no longer require(s) the services of a skilled nursing facility.

Discharge Location

The Appellant admits that he cannot stay at the Facility "forever," but he desires to remain at the Facility until his [REDACTED] [REDACTED] is scheduled. Further, he is concerned about being discharged to a [REDACTED] shelter because he feels "that he won't be able to [REDACTED] Prior to his [REDACTED] surgery, the Appellant lived with his [REDACTED] in her home. That option is no longer available to the Appellant, however. (T. Appellant). While the Appellant's position is understandably difficult, these are not appropriate reasons to remain in a skilled nursing facility. The Appellant is entitled to and encouraged to pursue other living arrangements. However, the Facility has proven that its plan to discharge the Appellant to a shelter is appropriate.

DECISION

Hopkins Center for Rehabilitation and Healthcare has established that its determination to discharge David Brown was correct, and that transfer to a [REDACTED] shelter is appropriate.

1. Hopkins Center for Rehabilitation and Healthcare is authorized to discharge [REDACTED] 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
August 17, 2018



MATTHEW C. HALL
Administrative Law Judge

To: [REDACTED]
c/o Hopkins Center for Rehabilitation and Healthcare
155 Dean Street
Brooklyn, New York 11217

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