



Department of Health

ANDREW M. CUOMO
Governor

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

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

November 28, 2018

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Mid-Hudson Regional Hospital
241 North Road
Poughkeepsie, New York 11217

Yosef Spierer, Nursing Home Administrator
The Grand at Pawling
9 Reservoir Road
Pawling, New York 12564

[REDACTED]
Barbara Kukowski, Esq.
Westchester Medical Center
Office of Legal Affairs
100 Woods Rd., Taylor Pavilion, 2nd Floor
Valhalla, New York 10595

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:
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

THE GRAND AT PAWLING
REHABILITATION AND NURSING

Respondent,

to discharge her from a residential health
care facility.

COPY

DECISION

Hearing Before:

Matthew C. Hall
Administrative Law Judge

Held at:

Mid-Hudson Regional Hospital
241 North Road
Poughkeepsie, New York 12601

Hearing Date:

November 20, 2018

Parties:

The Grand at Pawling
Rehabilitation and Nursing
By: Yosef Spierer

[Redacted]

By: Charles Bilyou

JURISDICTION

By notice dated [REDACTED] 2018, The Grand at Pawling Rehabilitation and Nursing (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
II - Discharge Notice [REDACTED] 18)

Facility Exhibits: A - Event Summary
B - Patient Review Instrument [REDACTED] 18)
C - Patient Review Instrument [REDACTED] 18)

Facility Witnesses: Yosef Spierer - Nursing Home Administrator
Dr. James Nashua - Attending Physician
Candace Spencer, R.N. - Director of Nursing

Appellant Exhibits: 1 - Medical Records [REDACTED] 18)

Appellant Witness: Pam Miller, R.N. - Supervisor
Lori Wilson, R.N. - Case Manager
Michael Swanwick - Director of Social Work
Dr. Karanjit Parihar - [REDACTED]
Jonathan Ludwin - Nurse Practitioner
[REDACTED] - Appellant's [REDACTED]

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 woman who was admitted to the Facility on [REDACTED] 2017, with diagnoses of [REDACTED]

[REDACTED] (Ex. A.)

2. On several occasions during the Appellant's stay at the Facility, the Appellant exhibited increasingly pronounced [REDACTED] behaviors," including [REDACTED]

[REDACTED] and [REDACTED]

[REDACTED] She also attempted to "elope" multiple times and refused to take medications. (Ex. A., T. Spierer.)

3. On [REDACTED] 2018, the Appellant made [REDACTED]

[REDACTED] toward a male resident. She was sent to [REDACTED]

[REDACTED] Hospital (Hospital) for [REDACTED]

evaluation. (Ex. A.)

4. After the Appellant spent several weeks at the Hospital, Dr. Karanjit Parihar, the Hospital's [REDACTED] determined that the Appellant's condition had improved and that she should be returned to the nursing home. Dr. Parihar noted that the Appellant no longer needed [REDACTED]" (Ex. C, T. Parihar, Ludwin.)

5. When the Hospital attempted to return the Appellant to the Facility, however, the Facility informed the Hospital that it would not allow the Appellant to return. The Facility determined to discharge the Appellant because "the continued safety (and health) of the individuals in the Facility...would otherwise be endangered by [the Appellant's] continued residency." The Facility also determined that "the [Appellant's] welfare and her needs could not be met in the Facility." (ALJ. II, T. Spierer.)

6. The Appellant has neither a medical nor psychiatric need for continued hospitalization. (Ex. C, T. Parihar, Ludwin.)

7. The Appellant has remained at [REDACTED] Hospital 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)(3) and (4), which states:

The transfer or discharge is appropriate because the safety and health of individuals in the facility (are) endangered.

The Facility also alleged that the Resident's discharge is permissible pursuant to 10 NYCRR § 415(h)(1)(i)(a)(1), which states:

The transfer or discharge is appropriate because the resident's needs cannot be met after reasonable attempts at accommodation in the Facility.

Under the hearing procedures at 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 continued safety and health of the individuals in the Facility...would otherwise be endangered by [the Appellant's] continued residency," and whether "the [Appellant's] welfare and her needs could be met in the Facility:"

The Appellant was admitted to the Facility [REDACTED] 2017 and since her admission, the Facility asserts that she has become increasingly difficult to manage. She has [REDACTED]

[REDACTED] tried to elope, [REDACTED]

[REDACTED]

[REDACTED] and refused medication. The Facility's Director of Nursing, Candace Spencer (Nurse Spencer) stated that the Appellant [REDACTED] (Ex. A., T. Spencer.)

The Hospital, on the other hand, while admitting that the Appellant was initially challenging to treat, asserts that the Appellant has improved considerably since her admission. The Hospital adjusted how they approached the resident and made changes to her medication. As a result, the Hospital asserts that the Appellant "has been more cooperative with medication and has not had any episodes of [REDACTED] lately. She has had good behavioral control." (Ex. C.) When asked specifically what changes were made to the Appellant's care, Nurse Practitioner Jonathan Ludwin (Mr. Ludwin) stated that they [REDACTED] and figured out "how to manage her." They "changed her medication," and once the medication was changed, "she became more compliant with her medication." Since then, she has had "no issues with [REDACTED]...not for several weeks." When asked what level of care the Appellant requires, Mr. Ludwin stated, "She is an appropriate candidate for a skilled nursing facility." When Doctor Parihar was asked, "Is

a nursing home an appropriate location for [the Appellant]?", he affirmed, "Yes." (T. Ludwin, Parihar.)

While the evidence does show that the Appellant is a challenging resident, the Facility has not provided sufficient evidence to prove that the Appellant is a danger to the continued safety (and health) of the individuals in the Facility, or that the Appellant's welfare and her needs cannot be met in the Facility.

Discharge Location

The Facility determined to discharge the Appellant to the Hospital. An acute care facility is not an appropriate discharge location, as affirmed by Mr. Ludwin's testimony. When asked if there are any risks associated with keeping the Appellant in an acute care setting, Mr. Ludwin stated that "there are several risks." This is "not a safe long-term care environment." In addition to the "lack of stimulation" provided in an acute care setting, the Appellant would be exposed to "hospital pathogens. The Hospital is not a safe place to be. It is a perfect place to be when you are sick, but not a place to be long-term. Any time you place an elderly patient in this setting, you are running a

high risk of developing a hospital-acquired infection, that otherwise could have been avoided." (T. Ludwin.)

Nursing Home Administrator Yosef Spierer (Mr. Spierer) argued that the Appellant "cannot safely stay at the nursing home." Nurse Spencer added that the Appellant would likely be a more appropriate fit at a facility that could provide a higher level of [REDACTED] care. They testified that such a placement could more effectively be accomplished by the Hospital and not by the Facility. (T. Spierer, Spencer.) These statements belie the requirements set forth in 10 NYCRR § 415.3(h)(1)(vi). It is not the Hospital's legal obligation to procure a suitable discharge plan for the Appellant. The Facility bears responsibility for the Appellant's care and any discharge planning.


The Appellant's discharge to the Hospital, an acute care facility, is not an appropriate discharge plan. While the Facility is legally authorized to remove the Appellant from its premises for medical evaluation and treatment, there is no legal authority for the Facility to refuse to re-admit the Appellant after she is cleared by the evaluating hospital to be able to return. The Facility's determination fails to comport with regulatory requirements and is not sustained.

DECISION AND ORDER

The Grand at Pawling Rehabilitation and Nursing has not established that the Appellant's discharge was necessary and the discharge plan appropriate.

1. The Grand at Pawling Rehabilitation and Nursing is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the Facility, pursuant to 10 NYCRR § 415.3(h)(1)(vi).
2. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Laws and Rules.

DATED: Albany, New York
November 28, 2018



MATTHEW C. HALL
Administrative Law Judge

To:

[REDACTED]
c/o Mid-Hudson Regional Hospital
241 North Road
Poughkeepsie, New York 11217

[REDACTED]
Yosef Spierer, Nursing Home Administrator
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