



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

February 6, 2019

CERTIFIED MAIL/RETURN RECEIPT

Nicolas Destinville, Administrator
Hudson Pointe at Riverdale Center
3220 Henry Hudson Parkway
Bronx, New York 10463

[REDACTED]
c/o Hudson Pointe at Riverdale Center
3220 Henry Hudson Parkway
Bronx, New York 10463



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

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

**Hudson Pointe at Riverdale
Center for Nursing & Rehabilitation**

Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION

Hearing Before:

Natalie J. Bordeaux
Administrative Law Judge

Held at:

Hudson Pointe at Riverdale Center for Nursing & Rehabilitation
3220 Henry Hudson Parkway
Bronx, New York 10463

Hearing Date:

January 16, 2019

Parties:

Hudson Pointe at Riverdale Center for Nursing and Rehabilitation
By: Nicolas Destinville, Administrator
3220 Henry Hudson Parkway
Bronx, New York 10463

By: [REDACTED]

3. By notice dated ██████████ 2018, the Facility determined to discharge the Appellant on ██████████, 2018 because her health has improved sufficiently that she no longer requires the services provided by the Facility. The notice proposes to discharge the Appellant to ██████████ located at ██████████. (Facility Exhibit 1.)

4. The Appellant does not require skilled nursing care, and performs all activities of daily living independently. (Facility Exhibit 3; Recording @ 8:53.)

5. The Appellant's clinical record contains documentation from the Appellant's physician and interdisciplinary care team that the Appellant's condition has improved to the extent that her needs can be met in the community. (Facility Exhibit 3.)

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

APPLICABLE LAW

A residential health care facility (also referred to in the 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).

Department regulations at 10 NYCRR § 415.3(h) describe the transfer and discharge rights of residential health care facility residents. They state, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility:

(a) the resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that:

(2) 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 residential health care facility must prove by substantial evidence that the discharge was necessary, and the discharge plan appropriate. 10 NYCRR § 415.3(h)(2)(iii); State Administrative Procedure Act § 306(1).

DISCUSSION

The Appellant was admitted to the Facility from ██████████ Hospital on ██████████ 2018 for short-term rehabilitation after experiencing ██████████

██████████. The Appellant is also diagnosed with ██████████ ██████████, conditions which were not the basis for her admission to the Facility. (Facility Exhibits 2 and 3.)

During her stay at the Facility, the Appellant received ██████████ therapy for three months as treatment for ██████████. She also received medical attention for pain management. (Recording @ 7:53.) The Appellant's conditions are now stable and require neither medical nor skilled nursing intervention. (Recording @ 10:53.) She has completed all prescribed occupational and physical therapies and has attained her highest level of rehabilitation potential. The Appellant is capable of independently performing all activities of daily living, including transferring, bed mobility, and ambulation. She is able to ambulate over ████████ feet with the use of a cane. The Appellant frequently leaves the Facility for several hours at a time without assistance from Facility staff. (Facility Exhibit 3; Recording @ 11:07.) While the Appellant may require additional time to perform certain activities, such as hygiene, grooming,

and dressing her [REDACTED] body, she is nevertheless capable of completing tasks without assistance. (Recording @ 8:53.) The Facility currently provides medication to the Appellant which she may also obtain in the community and is able to self-administer. (Recording @ 6:57.)

Dr. Khalil, the Appellant's attending physician at the Facility, has determined that the Appellant may be safely discharged. Although he acknowledged that the Appellant still has limited use of her [REDACTED], he stated that she has managed her limitation appropriately and does not require further care from the Facility. Practitioners in other disciplines, including nursing, social work, and rehabilitation, also agree that the Appellant does not require specialized services from the Facility. (Facility Exhibit 3; Recording @ 10:04; 14:08.)

The Appellant and her [REDACTED] disagree with the Facility's determination that she does not require services provided by a skilled nursing facility. They contended that she still requires "help." Mr. [REDACTED] the Appellant's [REDACTED] expressed frustration with the Facility's discontinuance of the Appellant's physical and occupational therapies as a form of maintaining all progress made during her short-term stay. (Recording @ 30:32.)

The Appellant was admitted for short-term rehabilitation. In furtherance of her comprehensive care plan, the Facility provided the Appellant with rehabilitation services to obtain her highest practical level of physical well-being. 10 NYCRR § 415.11 and § 415.16. Although the Appellant completed all prescribed therapies on [REDACTED], 2018, nearly six months before the date of this hearing, the Appellant's ability to perform activities of daily living remains unchanged. (Recording @ 10:04.) Neither the Appellant nor her [REDACTED] contended that the Appellant's abilities had declined or that the Appellant is unable to access physical and occupational therapy in the community. Their disagreement with the Facility's decision to stop

providing these therapies does not establish a continued need for those services or a continued need for other services uniquely offered by a skilled nursing facility.

Both the Appellant and Mr. [REDACTED] insisted that the Appellant continues to require help with activities of daily living, although she is not receiving any assistance from Facility staff. The Appellant described difficulties she encounters with dressing herself and shampooing her hair due to the limitations in her [REDACTED]. She explained that she only wears [REDACTED] because it is easier to put on. The Appellant stated that she [REDACTED] by [REDACTED] the [REDACTED] (Recording @ 18:43.) The Appellant's need for minimal assistance with activities of daily living does not refute the Facility's evidence that the Appellant is self-sufficient and does not require skilled nursing services.

The Appellant's [REDACTED] expressed concern for his [REDACTED] possible need for medical care in the future if she is injured. (Recording @ 35:25.) The prospect of the Appellant's future need for medical care does not justify extending her present stay at the Facility. The Appellant's [REDACTED] also submitted documentation regarding the Appellant's current receipt of outpatient medical care. (Appellant Exhibits B, C and G.) After Dr. Khalil reviewed these documents during the hearing, he confirmed that the information provided did not change his opinion regarding the Appellant's abilities. (Recording @ 1:00:46.) Far from demonstrating that the Appellant continues to require assistance from the Facility, the Appellant's evidence supported Dr. Khalil's testimony that the Appellant is able to receive all needed medical care in the community.

The Facility proposes to discharge the Appellant to [REDACTED], a facility designated by [REDACTED] an intake location for nursing homes to refer homeless residents. Dr. Khalil concluded that discharge to a shelter is

safe and appropriate. (Facility Exhibit 3; Recording @ 14:08.) The Appellant does not have a home in the community, and she currently has no income. (Recording @ 15:44; 26:31.) Before considering shelter placement, Ms. Thomas, the Facility's Director of Social Work, unsuccessfully attempted to refer the Appellant to other nursing homes, which deemed her unsuitable for transfer because she has no need for skilled nursing services. She also contacted [REDACTED], which advised her that housing was currently unavailable and explained that the Appellant would be able to include her name on a waiting list for future vacancies.

Ms. Thomas stated that the Appellant was ineligible for placement in nearby assisted living facilities due to her age. She explained that [REDACTED] will provide meals, showers, and a laundry room where the Appellant can wash her clothes. In addition, [REDACTED] will assist the Appellant with locating more permanent housing. (Recording @ 14:55.)

The Appellant and her son object to the Facility's discharge plan. They had visited the proposed discharge site on two occasions and asserted that there were no beds for sleeping at the [REDACTED]. The Appellant worried about her safety around other shelter occupants who may be dangerous due to the limited use of her [REDACTED]. Mr. [REDACTED] stated that [REDACTED] had no record of his [REDACTED] shelter referral, despite Ms. Thomas' assurances that she transmitted a completed referral form to [REDACTED] and received verbal confirmation from [REDACTED] staff that the referral was processed. (Recording @ 22:00.)

[REDACTED] operates a 24-hour drop-in center and a [REDACTED] at the [REDACTED] location. The Appellant's [REDACTED] was correctly advised that his [REDACTED] would not be accepted for the [REDACTED] without a referral. However, Ms. Thomas

submitted all the required paperwork several weeks before the hearing date. (Recording @ 16:36.)

The Facility has established that its discharge plan is appropriate.

CONCLUSION

Despite the Appellant's limited use of her [REDACTED], she is independently able to perform activities of daily living and receives no assistance from the Facility. The Appellant's main point of contention is that she should not be discharged to a shelter. However, due to the Appellant's present lack of income, stable medical conditions and physical independence, shelter placement is currently the only available discharge location. Her attending physician has confirmed that the Appellant is independent with all activities of daily living, and has no special medical needs.

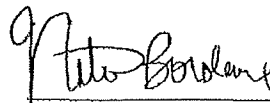
Despite the concerns voiced by the Appellant and her [REDACTED] regarding shelter placement, neither offered practical alternative discharge locations. The Appellant is entitled and encouraged to continue to pursue other options than shelter referral, but is not entitled to remain in the Facility while she does so. The Facility's determination is upheld.

DECISION

Hudson Pointe at Riverdale Center for Nursing and Rehabilitation has established that its determination to discharge the Appellant was correct, and that its discharge plan is appropriate.

1. Hudson Pointe at Riverdale Center for Nursing and Rehabilitation is authorized to discharge the Appellant in accordance with its [REDACTED] 2018 discharge notice.

Dated: February 6, 2019
New York, New York



Natalie J. Bordeaux
Administrative Law Judge