



Department of Health

ANDREW M. CUOMO
Governor

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

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

January 11, 2019

CERTIFIED MAIL/RETURN RECEIPT

Gaetana Capozzo, LMSW
Westchester Center for Rehabilitation & Nursing
10 Claremont Avenue
Mount Vernon, New York 10550

[REDACTED]
c/o Westchester Ctr for Rehab & Nursing
10 Claremont Avenue
Mount Vernon, New York 10550

Kathryn Grabowy, SW
Mount Sinai St. Luke's
1111 Amsterdam Avenue
New York, New York 10025

[REDACTED]

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: nm
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

WESTCHESTER CENTER FOR REHAB & NURSING

Respondent,

to discharge him from a residential health
facility.

COPY

DECISION

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On [REDACTED] [REDACTED] 2018, Westchester Center for Rehab & Nursing (Facility) discharged resident [REDACTED] [REDACTED] (Appellant) to Mount Sinai St. Luke's (the hospital), located at [REDACTED] [REDACTED] [REDACTED]. The Appellant appealed the discharge. On January 7, 2019, a hearing on the appeal was held before Dawn MacKillop-Soller, Administrative Law Judge, at the hospital. The Appellant appeared and was represented by his [REDACTED] [REDACTED]. The Facility was represented by director of nursing Cheikh Fall. Director of social work, Gaetana Capozzo, and nurse Jeni Bom Gonzalez also testified on behalf of the Facility. Social worker Kathryn Grabowy and physician Regina Gorman testified on behalf of the hospital. Evidence was received (Facility

Exhibits 1 and 2) and a stenographic transcript of the proceeding was made.

SUMMARY OF FACTS

1. Westchester Center for Rehabilitation & Nursing is a nursing home located in Mount Vernon, New York.

2. Appellant [REDACTED], age [REDACTED] was admitted as a resident at the Facility on [REDACTED], 2018, for occupational and physical therapy rehabilitation services following a [REDACTED]. His diagnoses included [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. He was discharged from rehabilitation on [REDACTED] [REDACTED] 2018 and placed in the Facility's long-term care. (Testimony Mr. Falls.)

3. In the long-term care unit, the Appellant began exhibiting [REDACTED] behaviors, including [REDACTED] his roommate to the [REDACTED] [REDACTED] on his bed and [REDACTED] him while he [REDACTED] by [REDACTED] on his bed. His behaviors also included [REDACTED] at staff and linens and [REDACTED] on the floor. (Exhibit 1.)

4. On [REDACTED] [REDACTED] 2018, the Facility transferred the Appellant to Mount Sinai St. Luke's, a hospital in Manhattan. (Exhibit 1.)

5. A "Transfer/Discharge Notice" prepared by the Facility and dated [REDACTED] [REDACTED] 2018, states the reasons for the discharge as "his welfare/or needs ... couldn't be met by the

services available at Westchester Center due to behavior [REDACTED]" (Exhibit 1.)

6. A Notice of Transfer/Discharge was never served on the Appellant or a family member. (Testimony nurse Gonzalez).

7. Soon after his admission to the hospital, the Appellant was diagnosed with a [REDACTED] [REDACTED] [REDACTED] [REDACTED], a condition known to cause [REDACTED] [REDACTED] and [REDACTED] [REDACTED] in [REDACTED] patients when left untreated. The Appellant was prescribed a course of antibiotics, which resolved the infection. (Testimony Dr. Gorman.)

8. Hospital [REDACTED] and medical assessments confirm the Appellant is medically stable and does not require continued inpatient care. The hospital determined that the Appellant is ready to return to the Facility. The Facility, however, refuses to accept his return, and has proposed no other discharge plan. (Testimony Dr. Gorman and Ms. Grabowy.)

9. The Appellant remains at the hospital pending the outcome of this hearing.

ISSUES

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

APPLICABLE LAW

Transfer and discharge rights of residential health care facility residents are set forth in Department regulations at 10 NYCRR 415.3(h). This regulation provides, 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:

- (1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;

(ii) ensure complete documentation in the resident's clinical record when the facility transfers or discharges a resident under any of the circumstances specified in subparagraph (i) of this paragraph. The documentation shall be made by:

- (a) the resident's physician and, as appropriate, interdisciplinary care team, when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; and

(iii) before it transfers or discharges a resident:

(a) notify the resident and designated representative, if any, and, if known, family member of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner the resident and/or family member understand;

(vi) provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and provide a discharge summary pursuant to section 415.11(d) of this Title; and

(vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.

(2) The department shall grant an opportunity for a hearing to any resident who requests it because he or she believes the facility has erroneously determined that he or she must be transferred or discharged in accordance with the following:

(iii)(b) the nursing home shall have the burden of proof that the discharge or transfer is/was necessary and the discharge plan appropriate.

DISCUSSION

The Appellant, age [REDACTED] was admitted to the Facility's nursing home on [REDACTED], 2018 for occupational and physical rehabilitation services following a [REDACTED]. His diagnoses included [REDACTED].

He was discharged from rehabilitation on [REDACTED] [REDACTED] 2018

and placed in the Facility's long-term care unit, when his conduct suddenly changed to include [REDACTED] his roommate to the [REDACTED] wandering into other residents' rooms and [REDACTED] and [REDACTED] on his roommate's [REDACTED]. The Facility claims that based on these [REDACTED] behaviors, the Appellant's needs could not be met, rendering discharge necessary. (Exhibit 1.)

The Facility argues that it has limited resources to handle the Appellant's [REDACTED] behaviors. This excuse is contrary to its duties under the regulation, which required the Facility make "reasonable attempts at accommodation" prior to discharge. 10 NYCRR 415.3(h)(1)(a)(1). The Facility failed to take any additional measures to defuse these behavioral [REDACTED] such as the temporary use of a private room or increased supervision. In accepting the Appellant as a resident in its nursing home, the Facility was obligated to explore these viable options to meet his needs, including contemplating reasonable room changes. 10 NYCRR 415.3(c)(2)(ii)(a).

This responsibility also extended to providing the Appellant with adequate clinical care and treatment, which it failed to do. 10 NYCRR 415.3(e)(1)(i). The Appellant's [REDACTED] 2018 Facility record documents that a [REDACTED] "was recently treated," however, the evidence suggests it remained

unresolved at the time of his hospital admission that same day. (Exhibit 2.) Upon his hospital admission, the Appellant required a complete course of treatment for the [REDACTED] a condition Dr. Gorman explained causes [REDACTED] problems and [REDACTED] symptoms in [REDACTED] patients. (Testimony Dr. Gorman.) Prior to determining to discharge the Appellant, the Facility was required to evaluate him to rule out such a medical cause for his behaviors, an obligation contemplated as "reasonable" under the regulation. 10 NYCRR 415.3(h)(1)(a)(1). Based on the Hospital's resolution of the [REDACTED] underlying his behaviors, the Facility is required to readmit the Appellant. 10 NYCRR 415.3(h)(1)(i).

The Facility has the burden of proof to establish the appropriateness of the discharge plan. 10 NYCRR 415.3(h)(1)(a)(2). Mr. Fall claimed that discharge planning is the responsibility of the hospital, yet he relies on no legal authority to support this. The Facility has made no convincing argument that the Appellant's placement in a hospital setting meets his long term needs and is an appropriate discharge plan. The hospital confirmed the Appellant is stable and there is no psychological or medical need for his continued placement. When there was an episode in the hospital of the Appellant pulling a resident from a bed, the hospital appropriately handled it by making room and

medication changes. Adjustments such as this are also available at the Facility. The Appellant is clinically ready for discharge from the hospital to the Facility, where he can receive the long-term care and nursing home services he requires. (Testimony Dr. Gorman.)

In addition to failing to establish an appropriate discharge plan, the Facility transferred the Appellant to Mount Sinai St. Luke's without issuing him or his [REDACTED] proper notice. Under 10 NYCRR 415.3(h)(1)(iii)(a), the Appellant and his brother should have been notified of the transfer and provided with the discharge notice, two steps the Facility failed to complete. The Appellant's clinical record was also devoid of a physician's note explaining the necessity for the discharge, which is required when it is claimed the discharge is necessary because the Appellant's needs cannot be met. 10 NYCRR 415.3(h)(1)(ii)(a).

The Facility having failed to provide proper notice of the discharge or to establish discharge was necessary and the existence of an appropriate discharge plan, the discharge appeal is granted. Consistent with the verbal directive at the conclusion of the hearing, the Facility is ordered to readmit the Appellant to the first available bed.

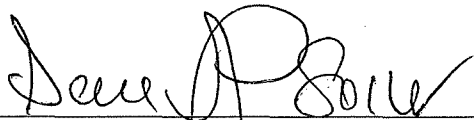
DECISION AND ORDER


1. The Facility has failed to establish that its discharge of the Appellant was necessary and that its discharge plan was appropriate;

2. The Facility is not authorized to discharge the Appellant without proper notice and an appropriate discharge plan; and

3. Pursuant to 10 NYCRR 415.3(h)(2)(i)(d), the Facility is directed to readmit the Appellant prior to admitting any other person.

**Dated: Albany, New York
January 11, 2019**


**DAWN MacKILLOP-SOLLER
Administrative Law Judge**

To: 
c/o Westchester Center for Rehab and Nursing
10 Claremont Avenue
Mount Vernon, New York 10550



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