



Department of Health

ANDREW M. CUOMO
Governor

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

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

May 14, 2019

CERTIFIED MAIL/RETURN RECEIPT

Mr. [REDACTED]
c/o Glen Cove Center for Nursing
and Rehabilitation
6 Medical Plaza
Glen Cove, New York 11542

Ms. Madeline Moritz, Administrator
Glen Cove Center for Nursing
and Rehabilitation
6 Medical Plaza
Glen Cove, New York 11542

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

[REDACTED]

Appellant,

from a determination by

GLEN COVE CENTER FOR
NURSING and REHABILITATION

Respondent,

to discharge him from a residential health
care facility.

COPY

DECISION

Hearing Before:

Matthew C. Hall
Administrative Law Judge

Held at:

Glen Cove Center for Nursing and
Rehabilitation
6 Medical Plaza
Glen Cove, New York 11542

Hearing Date:

April 19, 2019

Parties:

Glen Cove Center for Nursing
and Rehabilitation
By: Madeline Moritz

[REDACTED]

Pro Se

JURISDICTION

By notice dated [REDACTED] 2019, Glen Cove Center for Nursing and Rehabilitation (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] [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 and attached Facility Discharge Notice

Facility Exhibits: 1 - Admission Face Sheet
2 - Resident Room and Board statement
3 - Lori Muzio, statement
4 - Patricia Colalillo, statement
5 - Dr. Eugen Raber, statement

Facility Witnesses: Madeline Moritz - Administrator
Carolyn Kelly - Director of Social Work
Lori Brino Muzio - Social Worker
Andrew Sinatra - Director of Rehabilitation
Leteria Burrison-Cadena - Nursing Manager

Appellant's Witness: Appellant testified on his own behalf
[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 man who was admitted to the Facility on [REDACTED], 2015. (Ex 3.)

2. He was admitted with diagnoses of [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]

(Ex 1.)

3. By notice dated [REDACTED] 2019, the Facility determined to discharge the Appellant on [REDACTED] 2019 because his "health improve(d) sufficiently so that the Resident no longer needs the services of the Facility." (Ex. 1.)

4. The Facility also determined to discharge the Appellant because he failed, "after reasonable and appropriate notice, to pay for [his] stay at the facility." (ALJ. I.)

5. The Facility determined to discharge the Appellant to his home, located at [REDACTED]. (ALJ. I.)

6. At the time of his admission, the Appellant had recently undergone multiple surgeries to his back [REDACTED]. He "[REDACTED] and "needed extensive help." He required assistance with dressing, bathing and transfers. He also needed assistance in all his Activities of Daily Living (ADLs). (Ex. 1, 3, 4; T. Burrison-Cadena.)

7. By [REDACTED], 2019, the Appellant's condition was greatly improved. He could "function independently at a wheelchair level." He required only supervision and/or minimal contact during transfers and ambulation. He could ambulate up to [REDACTED] feet with a rolling walker. He was independent in all his ADLs and had "no further attainable goals for skilled rehab services at an inpatient facility." (Ex. 3,4; T. Burrison-Cadena, Sinatra.)

8. From the time of his admission to the Facility through August 31, 2018, the Appellant's stay at the Facility was financed by the [REDACTED] [REDACTED]) as a

result of a [REDACTED] injury sustained prior to his admission. As of [REDACTED] 2018, however, the Board has terminated payments to the Facility on behalf of the Appellant. (T. Moritz.)

9. The Appellant also made no payments to the Facility, and as of the date of this hearing, the Appellant owed the Facility \$ [REDACTED] in arrears. (T. Moritz.)

10. The Appellant owns a home where his [REDACTED] currently lives.

11. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending Physician, Administrator, Director of Social Service, Nursing Manager, and Director of Rehabilitation, that discharge to the Appellant's home is appropriate. (Ex. 3, 4, 5; T. Moritz, Kelly, Sinatra, Burrison-Cadena.)

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

The transfer or discharge is appropriate because the resident has failed, after reasonable and appropriate notice, to pay for (his) stay at 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 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

Regarding whether the resident's health improved sufficiently, and the resident no longer require(s) the services of a skilled nursing facility:

The Appellant was admitted to the Facility on November 20, 2015, with diagnoses including [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] The Appellant was admitted to the Facility after time spent in a hospital for three separate surgeries to his [REDACTED]. At the time of his admission to the Facility, the Appellant [REDACTED]" and "needed extensive help." He required assistance with dressing, bathing and transfers. He also needed assistance in all his ADLs. After over three years of rehabilitation at the Facility, however, the Appellant has made significant improvements in all these areas. At the time of the hearing, the Appellant was independent in all his ADLs. Indeed, the Appellant had "reached his highest functional performance" and was no longer making progress at the Facility. (Ex. 4.) Staying at

the Facility at this point essentially hampered the Appellant's improvement and conversely, reintegration into the community would allow him to make greater strides with his overall rehabilitation. (T. Sinatra.) According to the Appellant's attending physician, Dr. Raber, the Appellant had "plateaued with his rehabilitation potential." Dr. Raber continued that the Appellant, "at this time does not require supervision with restorative rehabilitation," thereby making him an appropriate candidate to return to his home and the community. (Ex. 4.)

Regarding whether the resident has failed, after reasonable and appropriate notice, to pay for (his) stay at the Facility.:

The Appellant was admitted to the Facility after spending time in the hospital after multiple surgeries. The Appellant's surgeries were due to injuries sustained while [REDACTED] and as a result, his stay at the Facility was funded by the [REDACTED]

After nearly three years in the Facility, however, the [REDACTED] discontinued payment to the Facility on behalf of the Appellant. The [REDACTED] did not assert that it intended to discontinue payments to the Facility on a permanent basis. However, the [REDACTED] also did not assert that it would recontinue payments on behalf of the Appellant. Essentially, the [REDACTED] fell out of communication with

all interested parties at this hearing. When asked if it is possible that payments may recontinue, Social Worker Lori Brino Muzio stated, "It is possible, but there is also a distinct possibility that they will not" recontinue to make payments on the Appellant's behalf. Regardless, the Facility has been housing and rehabilitating the Appellant since [REDACTED] 2018, without being paid. At the time of this hearing, the Facility was owed by the Appellant, or by any insurance paying on his behalf, \$ [REDACTED]

Pursuant to 10 NYCRR § 415(h)(1)(i)(b), the Facility may appropriately discharge the Appellant for his failure to pay or have his payments made to the Facility on his behalf.

Accordingly, the Facility has proven that its determination to discharge the Appellant is correct.

Regarding the Facility's proposed discharge location: As discussed above, the Appellant owns his own home. While the Appellant may need some help in his home, he is currently at "supervision level from a wheelchair." (T. Sinatra.) He does not need the help of a skilled nursing facility with his ADLs or transfers to and from his bed or a chair. His [REDACTED] lives at his home and would be there to assist him upon his return. Indeed, he has made visits to his home during his stay at the Facility and

was able to successfully negotiate the challenges of everyday life. The Appellant has been at the Facility for over three years and has reached a point where remaining at the Facility has become counterproductive.

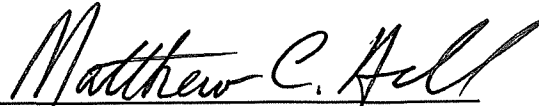
Accordingly, the Facility has proven that its determination to discharge the Appellant to his home is appropriate.

DECISION

Glen Cove Center for Nursing and Rehabilitation has established that its determination to discharge the Appellant was correct, and that transfer to his home is appropriate.

1. Glen Cove Center for Nursing and Rehabilitation is authorized to discharge the Appellant in accordance with its discharge plan on or after [REDACTED] 2019.
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
May 9, 2019


MATTHEW C. HALL
Administrative Law Judge

To:

█ █
c/o Glen Cove Center for Nursing and Rehabilitation
6 Medical Plaza
Glen Cove, New York 11542

Ms. Madeline Moritz, Administrator
Glen Cove Center for Nursing and Rehabilitation
6 Medical Plaza
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