



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 2, 2019

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Holliswood Center for Rehabilitation
and Health
195-44 Woodhull Avenue
Hollis, New York 11423

Yunetta Baron, Director of Social Services
Holliswood Center for Rehabilitation
and Health
195-44 Woodhull Avenue
Hollis, New York 11423

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



Appellant,

from a determination by

Holliswood Center for Rehabilitation & Health,

Respondent,

to discharge her from a residential health care facility.

ORIGINAL

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Holliswood Center for Rehabilitation & Health
195-44 Woodhull Avenue
Hollis, New York 11423

Hearing Date:

July 25, 2019

Parties:

Holliswood Center for Rehabilitation & Health
By: Yunetta Baron, Director of Social Services


Pro Se

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as Holliswood Center for Rehabilitation & Health (“Respondent” or “Facility”) is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(h). Respondent determined to discharge ██████████ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(a)(2) which provides, in pertinent part:

- (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.

Appellant appealed the discharge determination to the New York State Department of Health, and a hearing on that appeal was held. Pursuant to 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

A digital recording of the hearing was made part of the record. Appellant appeared and testified on her own behalf. The following witnesses testified for Respondent: Yunetta Baron—Director of Social Services, and Zevi Lipschitz—Administrator.

The following documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ and Facility Exhibits:

ALJ:

I: Notice of Hearing with the Facility's Discharge Notice attached

Facility:

- 1: PT discharge summary
- 2: ██████ 19 physician letter
- 3: ██████ 19 physician progress notes
- 4: ██████ and ██████/19 medical progress notes
- 5: ██████/19 ██████ progress notes
- 6: ██████ 19 follow-up appointment with physician
- 7: ██████/19 BIMS score

Appellant was given the opportunity but did not offer any exhibits.

ISSUE

Has Holliswood Center for Rehabilitation & Health established that the transfer is necessary and the 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. Any conflicting evidence was considered and rejected in favor of the cited evidence.

1. Respondent, Holliswood Center for Rehabilitation & Health ("Holliswood") is a residential health care facility located in Hollis, New York. (Ex I)
2. Appellant, ██████████, age ██████ was admitted to the Facility on ██████████ 2019, for short-term rehabilitation. Appellant was discharged from physical therapy on ██████████, 2019, when she reached her maximum potential with skilled services. Appellant is independent in her ADLs (activities of daily living), she goes out on pass independently, and she ambulates independently with no assistive devices. (Ex 1; Ex 2; Ex 3; T Lipschitz, Baron)

██████████ Holliswood

Appellant indicated that if she is discharged to the Shelter she will not go there but she did not identify where she would go.

DECISION

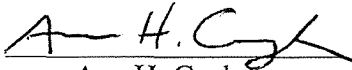
I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Holliswood Center for Rehabilitation & Health, is authorized to discharge Appellant in accordance with the ██████████ 2019 discharge notice. The discharge shall occur no sooner than ██████████ 2019, in order to give Appellant an opportunity (independently or with Respondent's assistance) to continue to explore and possibly secure discharge to a location other than ██████████ Appellant may leave the Facility sooner than ██████████ 2019, if housing suitable and acceptable to her is secured prior to that date, or for any other reason Appellant chooses to leave.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

Dated: New York, New York
August 2, 2019


Ann H. Gayle
Administrative Law Judge

TO: ██████████
c/o Holliswood Center for Rehabilitation & Health
195-44 Woodhull Avenue
Hollis, New York 11423

Yunetta Baron, Director of Social Services
Holliswood Center for Rehabilitation & Health
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