



Department of Health

ANDREW M. CUOMO
Governor

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

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

September 27, 2019

CERTIFIED MAIL/RETURN RECEIPT

Anne Weisbrod, DSW
Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Bronx, New York 10471

[REDACTED]
c/o Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Bronx, New York 10471

[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

██████████,

Appellant,

from a determination by

Hebrew Home for the Aged at Riverdale,

Respondent,

to discharge him from a residential health care facility.

ORIGINAL

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Bronx, New York 10471

Hearing Date:

September 19, 2019

Parties:

Hebrew Home for the Aged at Riverdale
By: Anne Weisbrod, Director of Social Work

██████████
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 Hebrew Home for the Aged at Riverdale (“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. SAPA § 306(1) provides that the standard of proof shall be by substantial evidence. “Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact; it is less than a preponderance of the evidence but more than mere surmise, conjecture or speculation. ...Put differently, there must be a rational basis for the decision. (Citations omitted)” (*Stoker v. Tarentino*, 101 A.D.2d 651, 652, 475 N.Y.S.2d 562, 564 [App. Div. 3d Dept. 1984], mod. 64 N.Y.2d 994, 489 N.Y.S.2d 43.

A digital recording of the hearing was made part of the record. Appellant appeared and testified on his own behalf. ██████████, Appellant's ██████████ assisted Appellant at the hearing and testified for Appellant. Anne Weisbrod, Director of Social Services, Robin Bernard, Social Worker, Lola Williams, R.N., Nurse Manager, and Yelena Pertsovsky, D.O., testified for Respondent.

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: Nursing notes/ADLs
- 2: Chart notes
- 3: List of assisted living facilities

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

ISSUE

Has Hebrew Home for the Aged at Riverdale 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, Hebrew Home for the Aged at Riverdale ("Hebrew Home") is a residential health care facility located in Bronx, New York. (Ex I)
2. Appellant, ██████████, age ██████ was admitted to the Facility in ██████████ 2018 for short-term rehabilitation; in ██████████ 2018, he was transferred to long-term care to receive

services to increase his strength and to further his independence. Appellant currently receives occupational therapy (“OT”) for his ██████████ pain; this can be provided in the community. Appellant is independent in all his ADLs (activities of daily living). Appellant ambulates with a rolling walker, and he goes out independently. (Ex 1; Ex 2; T Williams, Bernard)

3. By notice dated ██████████ 2019, Respondent advised Appellant that it had determined to discharge him on the grounds that his health has improved sufficiently so that he no longer needs the services provided by the Facility. (Ex I)

4. Appellant’s past and present medical conditions include ██████████ ██████████. These ██████████ conditions, as well as any possible need for surgeries in the future, can be treated in the community. (Ex 2; T Williams, Pertsovsky, Bernard)

5. Respondent’s discharge plan is to discharge Appellant to the ██████████ Shelter (“Shelter”) located at ██████████ ██████████. Appellant will be discharged with his rolling walker, and prescriptions for his medications will be sent to his pharmacy. The Shelter will provide assistance with housing and finding a physician in the community; the physician will assess Appellant to determine what services (such as OT) Appellant needs. (Ex I; T Bernard)

6. It is the professional opinion of Appellant’s caregivers at the Facility, including the Facility’s physician, that discharge to the community, including the Shelter, is appropriate for Appellant who requires no skilled care and is very independent and capable of managing his medications and medical treatment in the community. Appellant, who managed his medications prior to his admission to the Facility, has demonstrated his ability to perform ██████████ and administer his ██████████ (Ex 1; Ex 2; T Williams, Pertsovsky, Bernard, Appellant)

7. Appellant has remained at Hebrew Home for the Aged at Riverdale pending the outcome of this proceeding.

DISCUSSION

The evidence presented by Respondent demonstrated that: Appellant's OT services can be provided in the community; Appellant is independent with his ADLs; he has no skilled needs; his medical conditions are stable and can be treated in the community; he is capable of managing his health care needs; he ambulates independently with a rolling walker; he regularly goes out independently on and off the Facility's grounds; and discharge to the Shelter is a safe and appropriate discharge plan for Appellant. The Shelter will provide assistance with housing and finding a physician and other services in the community.

Appellant and Appellant's ██████████ believe that Appellant's conditions such as his ██████████ ██████████ (which was determined to be ██████████ and his potential need for ██████████ and other surgeries require a continued stay at the Facility. They believe that Appellant's now stable medical conditions will deteriorate in the Shelter so that he will require hospitalization and ultimate discharge back to a skilled facility, therefore he should remain in the Facility now to avoid that possible recurrence. Dr. Pertsovsky testified that it is safe to discharge Appellant to the Shelter. Dr. Pertsovsky further testified that evaluations and imaging studies Appellant recently underwent with a ██████████, and ██████████ all confirmed that Appellant's conditions are stable and no intervention is required at this time.

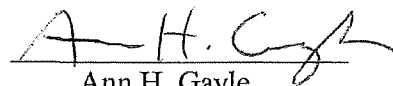
Appellant and his ██████████ believe the Shelter is unsafe for Appellant who had his ██████████ ██████████ and ██████████" in the Shelter when he previously resided there. They believe discharge to an assisted living facility ("ALF") is best for Appellant. Ms. Bernard faxed a

██████████ / Hebrew Home

location. Appellant may leave the Facility sooner than ██████████ 2019, if housing suitable and acceptable to him 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
September 27, 2019


Ann H. Gayle
Administrative Law Judge

TO: ██████████
c/o Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Bronx, New York 10471

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██████████
██████████

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