



Department of Health

ANDREW M. CUOMO
Governor

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

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

December 6, 2019

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Fordham Nursing and
Rehabilitation Center
2678 Kingsbridge Terrace
Bronx, New York 10463

Eileen Suarez, Social Worker
Fordham Nursing and
Rehabilitation Center
2678 Kingsbridge Terrace
Bronx, New York 10463

Angela C. Bellizzi, Esq.
225 Crossways Park Drive
Woodbury, New York 11797

RE: In the Matter of ██████████ – 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

Fordham Nursing and Rehabilitation Center,

Respondent,

to discharge her from a residential health care facility.

COPY

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Fordham Nursing and Rehabilitation Center
2678 Kingsbridge Terrace
Bronx, New York 10463

Hearing Date:

October 30, 2019
The hearing closed on November 19, 2019

Parties:

Fordham Nursing and Rehabilitation Center
By: Angela Bellizzi, Esq.

██████████
Pro Se (with assistance of a ██████████ interpreter)

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 Fordham Nursing and Rehabilitation Center (“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, 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 transcript (pages 1-87) of the hearing was made part of the record. Appellant appeared and testified on her own behalf. The following witnesses testified for Respondent: Amit Saxena, M.D.–Medical Director, Sally Lebron–Social Worker, Jillian C. Bosinius–Regional Director of Social Services, Eileen Suarez–Social Worker, Brenda Slater-Brown, R.N.–Director of Nursing, and Pooja Nanwani–Physical Therapist.

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

ALJ:

- I: Notice of Hearing with the Facility’s Discharge Notice attached

Facility:

- 1: ██████ 2019 Resident agreement to shelter discharge
- 2: ██████ 2019 summary discharge note
- 3: OT/PT discharge summary

Resident:

- A: ██████/19 consult report
- B: ██████/19 after visit summary
- C: ██████/19 progress notes
- D: Notice of custodial authorization (██████ version)

ISSUE

Has Fordham Nursing and Rehabilitation Center established that the transfer is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to transcript pages (“T”) and exhibits (“Ex”).

1. Respondent, Fordham Nursing and Rehabilitation Center, is a residential health care facility located in Bronx, New York. (Ex I)
2. Appellant, ██████, age ██████ was admitted to the Facility on ██████, 2018. Appellant received rehabilitation services in 2018 from: ██████ ██████ and in 2019 from: ██████/18 ██████/19 ██████ and ██████ Appellant was discharged from PT and OT (physical and occupational therapy) on ██████ ██████, 2019, when she reached her maximum potential with these skilled services. Appellant is independent “at wheelchair level” (T 71-72) in her ADLs (activities of daily living). (Ex 3; T 37, 59-60, 66-70, 71-72, 73-75)

3. Appellant's medical conditions include ██████████ and "a ██████████ condition which warrants oxygen use only if her oxygen level in her body drops down" (T 27). Appellant's medical conditions and medications can be treated and managed in the community. (Ex B; Ex C; T 26-27, 62-64)

4. By notice dated ██████████, 2019, Respondent advised Appellant that it had determined to discharge her on the grounds that her health has improved sufficiently so that she no longer needs the services provided by the Facility, and in compliance with Appellant's request¹. (Ex I; Ex 1)

5. Respondent's discharge plan is to discharge Appellant to the ██████████ ██████████ Shelter ("Shelter" or "██████████ Shelter") located at ██████████ ██████████ Appellant will be discharged with a wheelchair, oxygen concentrator, reacher, sock aid, long-handled scrubber, and prescriptions for medications and equipment such as a ██████████. Appellant is being educated on the use of an oxygen concentrator and ██████████ care, and she will be reassessed before discharge to determine what if anything else is required. The Shelter will assess Appellant "upon arrival to assure appropriate placement" (T 53) within the Shelter system, and the Shelter will provide ongoing case management. (Ex I; T 28, 37, 52-53, 60, 64-65, 67, 70)

6. It is the professional opinion of Appellant's caregivers at the Facility including the Facility's medical director that discharge to the community, including the Shelter, is appropriate for Appellant who requires no skilled care and is independent in her ADLs and capable of managing her medications and medical treatment in the community. (Ex 3; T 25-28, 34-35, 37, 60, 62, 64, 69)

7. Appellant has remained at the Facility pending the outcome of this proceeding.

¹ The Facility failed to prove that Appellant requested to be discharged.

DISCUSSION

The evidence presented by Respondent demonstrated that: Appellant completed her rehabilitative services; she is independent with her ADLs; she has no skilled needs; her medical conditions are ██████████ but stable and can be treated in the community; she is capable of managing her health care needs; and discharge to the Shelter is appropriate for Appellant.

The Shelter was identified as a last resort. Appellant resided with a roommate in the community prior to her admission to the Facility but that option is no longer available, and there are no friends or family with whom Appellant can reside. Respondent explored discharging Appellant to an assisted living facility or adult home, but Appellant did not meet the admission requirements. Ms. Bosinius testified that adult homes and assisted living facilities that accept Medicaid payment do not accept persons in wheelchairs, and Appellant testified that she does not have income to contribute to the private-pay facilities that accept persons in wheelchairs.

Appellant is concerned about being discharged to the Shelter because she requires oxygen, she has difficulty dressing herself, sometimes CNAs help her in the shower, and she believes she will have to leave the Shelter each day from 8 a.m. to 6 p.m. (T 22, 77-78).

Dr. Saxena testified that when Appellant's oxygen level drops she can use a concentrator which (along with education for its use prior to discharge) will be provided upon discharge, but that "at this point she's not requiring oxygen." (T 28). Ms. Nanwani testified that supplies for assistance with dressing herself were ordered and Appellant demonstrated her ability to utilize the devices independently. Ms. Bosinius testified that "the reason the social workers assisted with an application to the shelter and obtained acceptance prior to discharge with [Appellant's] approval for application was so that [Appellant] would be placed in an appropriate shelter that

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was safe and able to meet [her] physical needs and did not require [Appellant] to leave the facility during the hours of 8:00 a.m. and 6:00 p.m.” (T 80-81).

CONCLUSION

Respondent has proven that Appellant’s health has improved sufficiently that she no longer requires skilled care, and that discharge to the Franklin Shelter is appropriate for Appellant.

DECISION

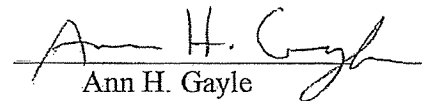
I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Fordham Nursing and Rehabilitation Center, is authorized to discharge Appellant in accordance with the █ 2019 discharge notice.

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
December 5, 2019


Ann H. Gayle
Administrative Law Judge

TO: █
c/o Fordham Nursing and Rehabilitation Center
2678 Kingsbridge Terrace
Bronx, New York 10463

Eileen Suarez, Social Worker
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