

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan
SAPA File
BOA by scan



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

April 16, 2020

CERTIFIED MAIL/RETURN RECEIPT AND EMAIL

Rayna Terry-Taylor
Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

[REDACTED]
c/o Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

Amy Ebinger, Esq.
Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

Vickey Johnson
Terence Cardinal Cooke
1249 Fifth Avenue
New York, New York 10029

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

Terence Cardinal Cooke Health Care Center

to discharge from a residential health care facility.

COPY

Before: Rayanne L. Babich
Administrative Law Judge (ALJ)

Held at: Terence Cardinal Cooke Health Care Center
1249 Fifth Avenue
New York, New York 11432

Parties: ██████████, Appellant
Terence Cardinal Cooke Health Care Center
1249 Fifth Avenue
New York, New York 11432

Terence Cardinal Cooke Health Care Center
1249 Fifth Avenue
New York, New York 11432
by: Amy Ebinger, Esq.

Through notice dated ██████████ 2019, Terence Cardinal Cooke Health Care Center (Facility), a residential health care facility subject to Article 28 of New York Public Health Law (PHL), sought to discharge ██████████ (Appellant) from the Facility. The Appellant requested an appeal with the New York State Department of Health (DOH) pursuant to Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York. (NYCRR Part 415.3(i)).

The hearing was held on January 31, 2020 and in accordance with the PHL; Part 415 of 10 NYCRR; Title 42, Part 483 of the United States Code of Federal Regulation (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR. Subsequent to the hearing, physical and occupational therapy assessments were completed on Appellant. The Facility submitted a copy of these assessments and additional financial documents into the record which closed on March 23, 2020. An audio recording was made of the hearing in two parts which appear in the record on one compact disc. [R 1@ 33:12; 2@ 7:29]

RECORD

ALJ Exhibits: I – Letter with Notice of Hearing
II – Notice of Discharge, [REDACTED] 2019

Facility Exhibits: 1 – Physician Statement, [REDACTED] 2019
2 – Physician Progress Note, [REDACTED], 2019
3 – Physical Therapy Assessment, [REDACTED] 2020
4 – Occupational Therapy Assessment, [REDACTED], 2020
5 – Terence Cardinal Cooke NAMI invoice, [REDACTED] 2020
6 – Terence Cardinal Cooke Account Balance, [REDACTED] 2018 - [REDACTED]
2020
7 – [REDACTED] coverage denial, [REDACTED]
[REDACTED], 2019

Appellant Exhibits: None

Facility Witnesses: Rayna Terry-Taylor, Director of Social Work
Vickey Johnson, Director of Patient Accounts

Appellant Witnesses: Appellant testified on his own behalf

FINDINGS OF FACT

The Findings of Fact were made after considering all testimony and documents admitted into evidence. The items that appear in parentheses following the findings indicate exhibits [Ex]

or recording time [R] in evidence. In instances where any evidence contradicted other evidence, it was considered by the ALJ and rejected.

1. Terence Cardinal Cooke Health Care Center is a skilled nursing facility as defined under PHL §2801 (2)-(3).
2. Appellant, a [REDACTED]-year-old male, was admitted to the Facility on [REDACTED] 2018 following [REDACTED]. [R1@ 4:05; Ex 2]
3. Prior to Appellant's admission to the Facility, he was residing in the community with family members and worked in [REDACTED] [R1@ 4:19]
4. Upon admission, Appellant received physical therapy until [REDACTED] 2018. No additional skilled services have been provided since that time. [R1@ 5:52 - 6:52; 9:38 - 10:21]
5. Appellant uses a rollator, remains independent in his activities of daily living, and receives a daily pass to leave the Facility. [R1@ 4:42, 6:20, 9:26]
6. Upon admission, the expected discharge plan was to return to his family's home, but he was unable to do so due to crowding. [R1@ 5:01]
7. A referral to the Department of Homeless Services was made on [REDACTED], 2018 and Appellant was accepted on [REDACTED] 2019, but he refused to enter the shelter system. [R1@ 5:25 - 5:41]
8. A referral to [REDACTED] for housing assistance was made in [REDACTED] 2019 and they are still working with Appellant. [R1@8:59 - 9:26]
9. The cost of Appellant's admission to the Facility was initially covered by [REDACTED] [REDACTED] from [REDACTED] 2018 through [REDACTED] 2018. [R1@ 13:33]

10. On Appellant's behalf, the Facility requested a fair hearing to appeal this determination and his coverage period with [REDACTED] was extended through [REDACTED] 2019. [R1@ 13:58 – 14:22]
11. Since [REDACTED] 2019, the Appellant has been paying a portion of the charges each month and as of [REDACTED] 2020, he has paid [REDACTED]. [R1@12:19, 14:45; Ex 5]
12. Since [REDACTED], 2019 to present time, Appellant has also worked with Facility social work staff and [REDACTED] case managers for assistance with obtaining housing. [R1@ 24:43 – 27:04]
13. On [REDACTED] 2019, the Facility issued a Notice of Discharge with a discharge location of the [REDACTED] Shelter located at [REDACTED]. [ALJ II]
14. A second application to the Department of Homeless Services was submitted in [REDACTED] 2019 and Appellant was accepted. [R2@ 3:16]
15. The shelter can accommodate Appellant's needs as he is independent in his personal care needs and will be accessible for Appellant's rollator. [R2@ 3:52]

ISSUE

Whether the facility has met its burden to show that its determination to discharge Appellant was proper and whether the discharge plan is safe and appropriate?

APPLICABLE LAW

A residential health care facility, or nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. [PHL§2801 (2)-(3); 10 NYCRR 415.2(k)] Under 10 NYCRR 415.3(i)(1)(i)(a)(2),

a resident may be transferred or discharged if “the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility.” In addition, pursuant to 415.3(i)(1)(i)(b),

(b) transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third-party insurance) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid. Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the funds;

Furthermore, the Facility has the burden to prove that the discharge plan and location is safe and appropriate. [10 NYCRR 415.3(i)(2)(iii)(b)] The standard of proof is substantial evidence. [SAPA § 306(1)]

DISCUSSION

Grounds for Transfer

The Facility has met its burden to show its determination to discharge Appellant was proper under 10 NYCRR 415.3(i). Through its Notice of Discharge, the Facility first alleged the discharge is proper under 10 NYCRR 415.3(i)(1)(i)(a)(2), because the Appellant’s condition has improved, and he no longer requires the level of care provided by the Facility. Appellant’s physical therapy services were completed on [REDACTED], 2018, and since that time he has not required additional skilled care. [R1@ 6:52; Ex 2] Appellant was provided with a rollator to assist in ambulation which he has continued to use throughout his admission. [R1@ 4:42] Appellant also remains independent in his activities of daily living and testified that he can complete his own showering and self-care tasks. [R1@ 9:26; 29:03] He uses his daily pass to visit local stores in the area

surrounding the Facility and stated his goal is to return to living in the community. [R1@ 29:23 – 29:53] As Appellant testified that he has difficulty using stairs at times, a physical therapy evaluation was performed on [REDACTED], 2020. The evaluation included a “community mobility screen” where Appellant was found to demonstrate “adequate safety awareness during the assessment and was able to safely return to the unit w/o instruction.” [Ex 3] Additionally, Appellant was evaluated for occupational therapy on [REDACTED], 2020 to assess his “ADL independence.” The results showed Appellant to be independent in “[REDACTED] ADLs” including dressing, hygiene/grooming and feeding. [Ex 4] For showering and [REDACTED] body dressing, Appellant takes extra time and can utilize devices to assist with [REDACTED] as needed. Overall, no skilled occupational services were found to be necessary. [Ex 4] Around the time that the Appellant was given a Notice for Discharge, the Facility physician documented in the Appellant’s chart that he is “medically stable for discharge to a shelter.” [Ex 2] For these reasons, the Facility has shown that the Appellant’s health has improved to where he no longer requires the level of care and services provided by the Facility and the discharge is proper under 10 NYCRR 415.3(i)(1)(i)(a)(2).

The Facility has also alleged that Appellant’s discharge is proper under 10 NYCRR 415.3(i)(1)(b) because the Appellant has failed to pay and Medicaid is not pending, and there are no matters of pending benefits or denial of benefits. [Ex II] The record shows that Appellant has a Medicaid plan through Health Plus, but they have denied payment due to their assessment that Appellant does not require nursing home level of care. [R1@ 11:15 – 11:55; Ex 7] Testimony and financial records demonstrated that Appellant has made partial payments in eight (8) of the last twelve (12) months since his [REDACTED] coverage ended on [REDACTED], 2019. [R1@ 14:45; Ex 5] Although it appeared that Appellant may still have an outstanding balance, further analysis

of a discharge or transfer is not necessary as the Facility has established the discharge is proper under 10 NYCRR 415.3(i)(1)(i)(a)(2). [Ex 6]

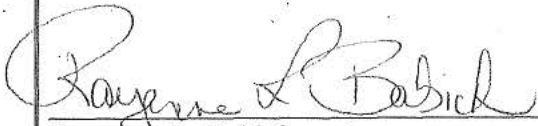
Discharge Plan

The Facility has also met its burden to show the discharge plan and location is safe and appropriate. The discharge location identified on the Notice of Discharge is to a ██████ Shelter in ██████. [ALJ II] Medical records from the Facility's physician prescribed that Appellant is safe to discharge to a shelter. [Ex 2] Appellant acknowledged that he would like to return to the community and obtain his own housing. [R1@ 29:33 – 30:17] As it has been established that Appellant can not return to the specific residence he inhabited prior to admission, efforts have been made by both the Facility and the Appellant in obtaining housing. [R1@ 5:01; 5:32 – 7:55; 24:53 – 27:04] In further support of Appellant's ability to safely and appropriately re-enter the community by way of the Homeless Shelter, the Facility's recent physical and occupational therapy evaluations found that Appellant can care for his own needs and negotiate surfaces in the community. [Ex 3, 4] The proposed shelter location can meet Appellant's needs through the provision of accessible housing along with mobility equipment which will be provided upon discharge. [R2@ 3:38 – 4:08] Additionally, the Facility has previously attempted to refer Appellant to the shelter system in ██████ 2018 but continued to care for Appellant and assisted with housing services as he did not wish to enter a shelter. [R1@ 5:25 – 5:48] Given this history and extended period of assistance provided to Appellant, it is now appropriate for him to be discharged to the proposed location where he may continue his efforts in obtaining community housing.

ORDER

For the reasons stated above, Terence Cardinal Cooke Health Care Center has established that its determination for discharge is proper and that its discharge plan is safe and appropriate under 10 NYCRR 415.3(i), and the Appellant's appeal is DENIED.

1. The Facility is permitted to discharge the Appellant according the discharge plan.
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.



Rayanne L. Babich
Administrative Law Judge

Dated: April 16, 2020
Albany, New York