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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

Kareem Hendrix, MSW
The Citadel Rehab and Nursing
3400-26 Cannon Place
Bronx, New York 10463

[REDACTED]
c/o Citadel Rehab and Nursing
3400-26 Cannon Place
Bronx, New York 10463

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

-----X
 In the Matter of an Appeal, pursuant to :
 10 NYCRR § 415.3, by :
 :
 [REDACTED] :
 :
 Appellant, :
 :
 from a determination by :
 CITADEL REHABILITATION AND :
 NURSING CENTER AT KINGSBRIDGE HEIGHTS :
 :
 Respondent, :
 :
 to discharge him from a residential health :
 care facility. :
 -----X

COPY

DECISION

Hearing Before: Sean D. O'Brien
 Administrative Law Judge

Held at: Citadel Rehabilitation and Nursing
 Center via WEB EX
 3400-26 Cannon Place
 Bronx, New York 10463

Hearing Date: April 9, 2020

Parties: Citadel Rehabilitation and
 Nursing Center

By: Mr. Kareem Hendrix
 Assistant Administrator/
 Director of Social Work

[REDACTED]
 Pro Se

JURISDICTION

By notice dated [REDACTED] [REDACTED] 2020, Citadel Rehabilitation and Nursing Center at Kingsbridge Heights (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) Section 415.3(i).

HEARING RECORD

Facility Exhibits: 1-2

Facility Witnesses: Kareem Hendrix, Assistant Administrator/Director of Social Work

Appellant's Witness: [REDACTED]

Administrative Law Judge Exhibit 1: Notice of Hearing with Discharge Notice

A digital recording of the hearing was made part of the hearing record via WEB EX.

ISSUE

Has the Facility established that the determination to transfer/discharge the Appellant is correct?

FINDINGS OF FACT

Citations in parentheses refer to testimony (T.) of witnesses and exhibits (Exhibit) 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 an [REDACTED] year-old male who was admitted to the Facility on [REDACTED] 2020, after his hospitalization at [REDACTED] Hospital with a diagnosis of [REDACTED]. (Exhibits 1,2; T. Hendrix).

2. The Appellant's medical conditions include: [REDACTED]

[REDACTED] and [REDACTED]

[REDACTED]. (Exhibit 2).

3. By notice dated [REDACTED] 2020, the Facility determined to discharge the Appellant on [REDACTED], 2020, because his "...health has improved sufficiently..." so that he no longer

needs the services of a skilled nursing facility. (Exhibits 1, 2; T. Hendrix).

4. The Facility determined to discharge the Appellant back to his apartment, [REDACTED] [REDACTED] [REDACTED]. (Exhibit 1; T Hendrix).

5. At the time of his admission to the Facility, the Appellant needed assistance in all of his Activities of Daily Living (ADLs) including ambulating, transferring and showering as well as the monitoring of [REDACTED] in his [REDACTED] area. The goal of Appellant's short term admission was to return the Appellant to his apartment in the community. (Exhibit 1; T. Hendrix)

6. The Appellant has completed his short term rehabilitation to the point where he no longer needs skilled nursing care nor does he need assistance with his ADLs. The [REDACTED] in his [REDACTED] have been removed. (Exhibits 1, 2; T. Hendrix).

7. The Appellant can take his own medications, self direct and make his own medical appointments. (Exhibit 1; T Hendrix).

8. The Appellant can ambulate at least [REDACTED] feet with or without an assistive device and is capable of negotiating at

least ■ plus steps (two floors) with supervision. (Exhibit 1; T Hendrix).

9. The Appellant was referred to and accepted for home care services in the community. The home care services by ■ ■ Home Care will include home therapy and rehabilitation services, and as needed nursing services. (Exhibit 1; T. Hendrix).

10. It is the professional opinion of the Appellant's caregivers at the Facility, including the Appellant's Attending Physician, the Facility's Assistant Administrator/ Director of Social Work, and the Facility's Rehabilitation team, that discharge to the community, in particular, the Appellant's apartment is appropriate. (Exhibits 1, 2; T. Hendrix).

11. The Appellant remains at the Facility pending the outcome of the 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 Sections 2801(2)(3); 10 NYCRR Section 415.2(k).

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR Section 415.3[i][1]).

The Facility alleges the Appellant's discharge is permissible pursuant to 10 NYCRR Section 415(i)(1)(i)(a)(2), which states in relevant part:

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.

Under the hearing procedures at 10 NYCRR Section §415.3(i)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under the New York State Administrative Procedures Act (SAPA) Section 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

The Appellant was admitted to the Facility on [REDACTED], 2020, for short term rehabilitation. His medical conditions included: the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED]. At the time of his admission to the Facility, the Appellant required assistance with the ADLs of ambulating, transferring and showering. (Exhibits 1, 2; T. Hendrix).

By [REDACTED] 2020, however, the Appellant had made sufficient improvements in all ADLs areas and had no further need for rehabilitation and skilled nursing care at the facility. The Appellant can ambulate [REDACTED] plus feet with or without assistance and he can walk up at least [REDACTED] steps (two floors) with supervision. (Exhibits 1, 2; T. Hendrix).

Mr. Kareem Hendrix, the Assistant Administrator and the Director of Social Work at the Facility testified Appellant is reluctant to do more physically even though he is capable of doing so. Mr. Hendrix also testified the Appellant is being discharged back to his apartment where he was living prior to his

hospitalization and his stay at the Facility. (Exhibit 1; T. Hendrix).

The Facility coordinated in obtaining a home health aid agency, [REDACTED] Home Care, to assist the Appellant post discharge. The services of the home health aid agency include nursing services to assist the Appellant in the monitoring of his medical conditions and aides to assist Appellant in household and personal care. The home health aides of the agency can also attend to Appellant's errands that will minimize Appellant's need to walk up the stairs at his apartment building. (Exhibit 1; T. Hendrix).

Importantly, the Appellant's attending physician at the Facility ordered the Appellant, "...[d]ischarge to home in the community....". (Exhibit 2). The Appellant testified on his own behalf and made it known he does want to be discharged because he feels that he is not ready, but did not provide any medical proof to support his position. Therefore, the Facility has met its burden of establishing valid grounds for discharge. 10 NYCRR Section 415.3(i)(1)(i)(b).

The discharge plan to the Appellant's apartment is appropriate. The Facility has engaged the services of a home health aide agency on behalf of the Appellant. The home health

agency will provide nurses to the Appellant to assist him medically, as needed, and home health aides for his household and personal care. The discharge plan addresses the medical needs and personal care needs of the Appellant post discharge. 10 NYCRR Section 415.3(i)(1)(vi).

The Facility referred the Appellant to more than one home care agency and coordinated the engagement of services to assist the Appellant after his discharge back to his apartment. (Exhibit 1, T. Hendrix). The Facility has adequately planned for the Appellant's discharge. In addition, the Facility afforded the Appellant the opportunity to participate in his discharge plan and the Facility addressed the medical needs of the Appellant post discharge. 10 NYCRR Section 415.3(i)(1)(vi).

CONCLUSION

The Citadel Rehabilitation and Nursing Center has proven that its determination to discharge the Appellant was correct and the discharge plan is appropriate.


DECISION

The appeal by Appellant is therefore DENIED.

The Facility is authorized to discharge Appellant in accordance with the [REDACTED] 2020, 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: Albany, New York
April 16, 2020



Sean D. O'Brien
Administrative Law Judge

To: Mr. [REDACTED]
c/o Citadel at Kingsbridge
3400-26 Cannon Place
Bronx, New York 10463

Mr. Kareem Hendrix,
Assistant Administrator/Director of Social Work
Citadel Rehabilitation and Nursing Center
3400-26 Cannon Place
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