

(CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR. A transcript was made of the hearing.

RECORD

ALJ Exhibits: I – Letter with Notice of Hearing
II – Notice of Discharge dated [REDACTED], 2020

Facility Exhibits: 1 – Resident Nursing Instructions
2 – Social Work Progress Notes
3 – Letter from Facility Physician

Appellant Exhibits: None

Facility Witnesses: Sharon Praigroe, Services Coordinator Manager
Rebecca Westfall, Resident Services Coordinator

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 transcript testimony [T] in evidence. In instances where any evidence contradicted other evidence, it was considered by the ALJ and rejected.

1. Appellant was admitted to the Facility in 2013 and current diagnoses include: [REDACTED]
[REDACTED]. [T pg. 7]
2. Appellant is independent in his activities of daily living, performs all of his self-care and is no longer receiving skilled services. [Ex 1; T pgs. 7-9]
3. The Facility has aided Appellant with the application process for assisted living facilities (ALF) in his local area. [Ex 2; T pgs 9-12]

4. Appellant toured a specific assisted living facility, identified as [REDACTED] which accepted Appellant for admission in [REDACTED] 2020. Appellant agreed to this ALF placement. [Ex 2; T pgs. 9-10]
5. The Facility served a Notice of Discharge upon Appellant on [REDACTED] 2020 on the ground that the Appellant's health has improved sufficiently so that he no longer requires the services provided by the Facility and a proposed discharge location as [REDACTED] [ALJ II; T pg. 10]
6. Appellant has subsequently declined placement at [REDACTED] because he found the living space to be too narrow but is agreeable to placement in another ALF. [T pg. 27]
7. The Facility has assisted the Appellant with two additional applications for alternate ALF locations which are still pending. [T pg 10]

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 discharged "because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility." 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). Upon discharge, the “plan of care that shall be developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment and assure that needed medical and supportive service have been arranged and are available to meet the identified needs of the resident.” (10 NYCRR 415.11(d)(3). 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 transfer Appellant was proper under 10 NYCRR 415.3(i). Through its Notice of Discharge, the Facility alleges the discharge is proper because the Appellant no longer requires skilled care. [ALJ II] The Facility’s physician has documented that admission to an ALF is an appropriate discharge plan for Appellant and has documented the same on the application documents to ALF locations. [Ex 3; T pg. 13] The Facility staff testified that Appellant is independent in his activities of daily living and that he completes his own self-care each day, ambulates independently with a rollator and frequently leaves the Facility for shopping trips. Although Appellant previously received physical and occupational therapy services, it has been more than one year since these services were discontinued. [T pgs. 7-8] Appellant did not dispute his independence and offered no evidence that he continues to require the services of the Facility. In fact, he confirmed that he uses a “walker” for ambulation, completes personal care as needed, and attends the shopping trips offered by the Facility. [T pgs. 21-22] As Appellant has reached a level of independence above the services normally offered by the Facility, a discharge to another more appropriate setting to meet his needs is proper under 10 NYCRR 4 415.3(i)(1)(i)(a)(2).

Discharge Plan

The Facility has also met its burden to show that the discharge plan and location is safe and appropriate under 10 NYCRR(i)(2)(iii)(b). The proposed discharge location listed on the Notice of Discharge is the [REDACTED] [ALJ II] As an ALF located in the Bronx, New York, it will be able to meet Appellant's care needs which include accessible housing for his rollator, housekeeping, meal preparation and, if needed, medication management. [T pgs. 11, 16] The Facility has actively engaged with the Appellant in the discharge planning process which included assisting with applications and visiting the physical location of [REDACTED] [T pgs. 10-11] Although Appellant originally agreed to the discharge location, he later objected stating that the space appeared too "narrow" for his liking and would like to remain at the Facility. [T pg. 27] In response to Appellant's objection, the Facility has engaged in further discharge planning as prescribed under 10 NYCRR 415.11(d)(3) by identifying two additional ALF locations for potential placement. Facility staff offered assistance with the completion and submission of both applications on his behalf.¹ [T pgs. 10-11] Although the previously agreed upon discharge location may not be Appellant's absolute ideal setting, his attainment of independent self-care combined with the efforts of the Facility in securing a suitable discharge location show the Facility has met its burden as required under 10 NYCRR 415.3(i).

The fact that Appellant was first agreeable to the identified discharge location on the Notice of Discharge but later changed his mind does not negate the Facility's discharge planning which resulted in a safe environment to meet all his medical and care needs. Overall, although Appellant enjoys his stay at the Facility, his testimony demonstrates he remains agreeable to a discharge to an ALF placement. [T pg. 26] Although the Appellant must be in agreement before placement in

¹ The Facility has submitted additional applications to two additional facilities but due to the current community health crisis, admissions at those facilities are on hold.

any ALF placement, the Facility has accomplished the requisite goals of discharge planning as provided under 10 NYCRR Parts 415.3(i) and 415.11(d)(3).

ORDER

For the reasons stated above, Hebrew Home at Riverdale has established that its determination for discharge is proper and that its discharge plan is appropriate under 10 NYCRR 415.3(i); and the Appellant's appeal is DENIED.

1. The Facility is authorized to transfer the Appellant in accordance with the plan on the Notice of Discharge dated [REDACTED] 2019 or to another suitable Assisted Living Facility, whichever is consented to by Appellant.
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: June 3, 2020
Albany, New York

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

June 4, 2020

CERTIFIED MAIL/RETURN RECEIPT

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

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

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