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**Department
of Health**

ANDREW M. CUOMO
Governor

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

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

January 15, 2021

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Little Neck Nursing Care Center
260-19 Nassau Boulevard
Little Neck, New York 11362

Maude Schwartz, DSW
Little Neck Nursing Care Center
260-19 Nassau Boulevard
Little Neck, New York 11362

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 :
[REDACTED] :
Appellant, :
from a determination by :
Little Neck Nursing Care Center, :
Respondent, :
to discharge her from a residential health care facility. :

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DECISION

Hearing Before: Ann Gayle
Administrative Law Judge

Held: Via Cisco Webex

Hearing Date: December 22, 2020

Parties: Little Neck Nursing Care Center
By: Maude Schwartz, Social Work Director

By: [REDACTED] Representative

Little Neck

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 Little Neck Nursing Care 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(i). Respondent determined to discharge [REDACTED] [REDACTED] (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(i)(1)(i)(a)(2) which provides, in pertinent part:

...
(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.

[REDACTED] (“Appellant’s [REDACTED] on behalf of Appellant, appealed the discharge determination to the New York State Department of Health and a hearing on that appeal was held. Pursuant to §415.3(i)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

A recording of the hearing was made part of the record. Appellant’s [REDACTED] waived Appellant’s appearance at the hearing and on all conference calls, and she testified on behalf of Appellant. Rehabilitation Director Dr. Ralu Onubogu, Social Work Director Maude Schwartz, Nurse [REDACTED] and Recreation Director Jennifer McIntyre testified for Respondent.

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

ALJ

I: Letter and Notice of Hearing with attached Notice of Discharge/Transfer

Facility:

- 1: Occupational Therapy (“OT”) documentation –27 pages
- 2: Physical Therapy (“PT”) documentation –23 pages
- 3: Speech Therapy (“ST”) documentation –10 pages
- 4: Face Sheet –1 page
- 5: Progress Notes –12 pages

Appellant:

- A: 2020 Medical Records –8 pages
- B: Power of Attorney documentation –3 pages
- C: 2020 Medical Records –6 pages
- D: Health Care Proxy documentation –3 pages
- E: Excerpt of Cooperative Apartment Contract of Sale –1 page

The record closed January 5, 2021, at the conclusion of the conference call.

ISSUE

Has Little Neck Nursing Care Center established that the discharge is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (“T”) and exhibits (“Ex”) found persuasive.

- 1. Respondent, Little Neck Nursing Care Center, is a residential health care facility located in Little Neck, New York. (Ex I, Ex 4)
- 2. Appellant, age was admitted to the Facility on , 2020, for short-term care. Appellant received OT/PT from to 2020 and ST from to , 2020, when she reached her maximum potential in each discipline. In 2020, Appellant was not picked up for restorative care by Medicaid due

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to her high level of functioning; and she was administered and passed a balance test with a score of ██████/56. (Ex 1, 2, 3, 4, 5; T Onubogu, Schwartz)

3. It is the professional opinion of Appellant's caregivers at the Facility that discharge to the community, including her home with services or an assisted living facility, is appropriate for Appellant. By notice dated ██████ 2020, Respondent advised Appellant that it had determined to discharge Appellant to her home on the grounds that her health has improved sufficiently so she no longer needs the services provided by the Facility. (Ex I; Ex 5; T Onubogu, Schwartz, ██████ McIntyre)

4. Upon discharge, Respondent will provide Appellant with a rolling walker or rollator, medications and prescriptions. Appellant will be evaluated by ██████ to determine the services she would require such as PT/OT/ST, home attendant, nursing. (Ex 5; T Onubogu, Schwartz, ██████)

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

DISCUSSION

The evidence presented by Respondent demonstrated that: Appellant is sufficiently independent with her ADLs (activities of daily living); she no longer requires skilled care; and discharge to her home or an assisted living facility is an appropriate discharge location for Appellant.

Appellant's ██████ testified that prior to her admission to the Facility, Appellant was hospitalized in ██████ 2020 due to a fall, transferred to a skilled facility, and then discharged home in ██████ 2020. Appellant was readmitted to the hospital several days later due to falls, ██████, and ██████; she was then transferred to this Facility. Appellant's ██████ is concerned that discharging Appellant to her home at this time would lead to that

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same cycle repeating itself. Appellant's ██████ further testified that she is concerned for Appellant's safety because she "goes in and out" from "being alert to not being alert" ... she could be "alert and independent one week and not alert and independent the next week" without warning that her condition is changing.

Dr. Onubogu, Mr. ██████ Ms. McIntyre, and Ms. Schwartz testified that Appellant has reached her maximum potential in rehab, and she is able to perform her ADLs, make her needs known and make decisions but defers to her ██████ They concur that Appellant no longer needs the Facility's level of care and that return to her home is appropriate for Appellant at this time.

Appellant's ██████ testimony and the ██████ 2020 medical records (Ex C) showed Appellant, in ██████ 2020, in need of rehabilitative services and substantial assistance with ADLs etc., for which she was admitted to the Facility. However, Respondent has demonstrated that Appellant, by ██████ 2020, reached her maximum potential in rehab and that she is capable of performing her ADLs to the extent that discharge home with services is appropriate. Speculation that the cycle of admission to a hospital with subsequent discharge to a skilled facility is not sufficient to warrant remaining in the Facility when Respondent has proven that Appellant's health has improved sufficiently and that discharge home with services is appropriate at this time.

Testimony at the hearing revealed that the parties explored discharge to an assisted living facility and that ██████ Assisted Living ("██████") accepted Appellant. Appellant's ██████ understanding is that Appellant cannot be admitted to ██████ with her current means and that Appellant's means would be suitable for ██████ once Appellant's cooperative apartment ("co-op") which is in a Contract for Sale (Ex E) is sold; Ms. Schwartz's

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understanding is that Appellant can be admitted to ██████ prior to/independent of the co-op and sale thereof. Additional testimony revealed that Appellant might be eligible for transfer to a different facility for long-term care. The record remained open at the conclusion of the December 22 hearing to give the parties the opportunity to further explore those options.

On a January 5, 2021 conference call Appellant's ██████ reported that she is reluctant to have Appellant moved to another facility (too many moves, and Covid concerns) and would await a hearing decision.

CONCLUSION

Respondent has proven that Appellant's health has improved sufficiently that she no longer requires skilled care, and that discharge to her home with services is appropriate for Appellant at this time.

DECISION

I find that the Facility has proved by substantial evidence that the discharge is necessary and the discharge location is appropriate.

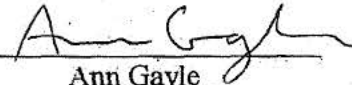
The appeal by Appellant is therefore DENIED.


Respondent, Little Neck Nursing Care Center, is authorized to discharge Appellant in accordance with the ██████, 2020 Discharge Notice. The discharge shall occur no sooner than ██████ 2021, in order to give Appellant and Appellant's ██████ an opportunity (independently or with Respondent's assistance) to continue to explore and possibly secure discharge to a location other than her home. Appellant may leave the Facility sooner than ██████ 2021, if housing suitable and acceptable to her is secured prior to that date, or for any other reason Appellant chooses to leave.

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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
January 14, 2021


Ann Gayle
Administrative Law Judge

TO: 
c/o Little Neck Nursing Care Center
260-19 Nassau Boulevard
Little Neck, New York 11362



Maude Schwartz, Social Work Director
Little Neck Nursing Care Center
260-19 Nassau Boulevard
Little Neck, New York 11362