



**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 29, 2021

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Beth Abraham Center
612 Allerton Avenue
Bronx, New York 10467

Allison Bellin, LMSW
Beth Abraham Center
612 Allerton Avenue
Bronx, New York 10467

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 :
: **Beth Abraham Center,** :
: Respondent, :
: to discharge him from a residential health care facility. :
:

COPY


DECISION

Hearing Before: Ann Gayle
Administrative Law Judge

Held: Via Cisco Webex

Hearing Date: January 26, 2021

Parties: Beth Abraham Center
By: Allison Bellin, Social Work Director


Pro Se

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 Beth Abraham 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 Ramon Carbonell (“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.

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 testified on his own behalf. Rehabilitation Director Jacqueline Turenne, Social Work Director Allison Bellin, and Nurse Manager Mark Stephens testified for Respondent. Appellant’s ██████████, and Appellant’s ██████████, as well as Respondent’s administrator, Moshe Blackstein, participated in the hearing.

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

ALJ

- I: Letter and Notice of Hearing with attached Notice of Discharge/Transfer
- II: ██████████, 2021 letter
- III: ██████████, 2021 letter

Facility:

- 1: Occupational Therapy (“OT”)/Physical Therapy (“PT”) documentation – 6 pages
- 2: Care Plan Activity Report – 2 pages
- 3: Medical Progress Note –1 page

Appellant was given the opportunity but did not offer any documents into evidence.

ISSUE

Has Beth Abraham 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, Beth Abraham Center, is a residential health care facility located in Bronx, New York. (Ex I)
- 2. Appellant, ██████████, age ██████ was admitted to the Facility on ██████████ 2020, for short-term care. Appellant received OT/PT from ██████████ to ██████████ 2020, when he reached his maximum potential in each discipline. Following a fall in ██████████ 2020, Respondent received PT/OT again from ██████████, 2020; he was discharged when he achieved all his goals. Appellant’s functioning level went from totally dependent on care for his ADLs (activities of daily living) when he was admitted to the Facility to independent at this time. Appellant is alert and oriented, able to make his needs known and care for himself, and he scored ██████/15 on a mental exam. (Ex 1; Ex 2; T Turenne, Bellin)
- 3. It is the professional opinion of Appellant’s caregivers at the Facility that discharge to the community, including the ██████ ██████████ Shelter located at ██████ ██████████

██████████ (“Shelter”), is appropriate for Appellant. By notice dated ██████████ 2020, Respondent advised Appellant that it had determined to discharge Appellant to the Shelter on the grounds that his health has improved sufficiently so he no longer needs the services provided by the Facility. (Ex 1; Ex 3; T Turenne, Stephens, Bellin)

4. Prior to discharge, Respondent will provide Appellant with education on how to administer and manage his medications in the community. Upon discharge, Respondent will provide Appellant with a new rollator, medications and prescriptions, and an appointment with a physician in the community. Respondent will provide transportation for Appellant from the Facility to the Shelter. The Shelter will provide housing, meals, case management, and assistance with obtaining more permanent housing and benefits for which Appellant might be eligible. (T Stephens, Bellin)

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

DISCUSSION

The evidence presented by Respondent demonstrated that: Appellant is independent with his ADLs; he no longer requires skilled care; and discharge to the Shelter system, where Appellant previously resided, is an appropriate discharge location for Appellant.

Appellant testified that he does not consider himself safe in the Shelter which he claims is a “crazy” place with “mad” people. Ms. Bellin testified that the Shelter was designated as a last resort because Appellant does not have a home in the community, and he does not have the means to be discharged to an assisted living facility. Ms. Bellin and Appellant testified that there are no friends or family available with whom Appellant can reside.

Nurse Manager Stephens testified that Respondent, particularly nursing, would educate Appellant on how to administer and manage his various medications. Mr. Stephens testified that

██████ Beth Abraham

he anticipates it will take a few days for Appellant to complete this education which could begin as soon as the evening on which the hearing was held.

CONCLUSION

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

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, Beth Abraham Center, is authorized to discharge Appellant in accordance with the ██████████ 2020 Discharge Notice. The discharge shall occur following Respondent's educating Appellant with medication administration/management. Appellant may leave the Facility sooner for any other reason Appellant chooses to leave.

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 28, 2021


Ann Gayle
Administrative Law Judge

TO: ██████████
c/o Beth Abraham Center
612 Allerton Avenue
Bronx, New York 10467

Allison Bellin, Social Work Director
Beth Abraham Center
612 Allerton Avenue
Bronx, New York 10467

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