

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

July 13, 2021

CERTIFIED MAIL/RETURN RECEIPT

██████ ██████
c/o Rutland Nursing Home
585 Schenectady Avenue
Brooklyn, New York 11203

Susan Marotta, Esq.
One Brooklyn Health System, Inc.
One Brookdale Plaza
Brooklyn, New York 11212

Deborah Headley, Social Work Director
Rutland Nursing Home
585 Schenectady Avenue
Brooklyn, New York 11203

RE: In the Matter of ██████ ██████ – 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 :

Rutland Nursing Home,

Respondent, :

to discharge him from a residential health care facility. :

COPY

DECISION

Hearing Before: Ann Gayle
Administrative Law Judge

Held: Via Cisco Webex

Hearing Dates: June 17 and July 9, 2021

Parties: ██████████ – *Pro Se*
c/o Rutland Nursing Home
585 Schenectady Avenue
Brooklyn, New York 11203

Rutland Nursing Home
By: Susan Marotta, Esq.
One Brooklyn Health System, Inc.
One Brookdale Plaza
Brooklyn, New York 11212

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 Rutland Nursing Home (“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 █ █ (“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 and Appellant’s █ testified for Appellant. Moiz Hamdani, M.D., Deborah Headley, Marra Blank, R.N., and Annei Banzon testified for Respondent.

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

ALJ

- I: Notice of Hearing with attached Notice of Discharge/Transfer
- II: █ 2021 letter

Facility:

- A: Face Sheet – 4 pages
- B: Physician note – 1 page
- C: Progress notes – 9 pages
- D: Transfer/Discharge Notice – 2 pages
- E: Social Work note – 1 page
- F: Physician note – 1 page
- G: Rehab screening form – 1 page
- H: Progress notes – 1 page
- I: Progress notes – 2 pages

Resident:

- 1: █/21 letter – 1 page

ISSUE

Has Rutland Nursing Home 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, Rutland Nursing Home, is a residential health care facility located in Brooklyn, New York. (Ex I)
2. Appellant, █ █ age █, was admitted to the Facility on █ 2020, for short-term care including follow-up of the █ he received in the hospital for █ Appellant’s chronic conditions include █ █ (Ex 1). Appellant received and has successfully completed █ antibiotics, wound care, and physical therapy. Appellant is alert and oriented, and able to make his needs known and care for himself. Appellant’s chronic conditions including any need for additional physical therapy can be addressed in the community. (Ex 1; Ex A; B; F; G; H; T Hamdani, Banzon, Blank)

█ / Rutland

rehabilitation goals and is now at “baseline” following his restorative rehabilitative services at the Facility, is ready for and would benefit from outpatient physical therapy in the community.

Appellant does not want to be discharged to the Shelter. Appellant’s █ testified that the Shelter would not be appropriate for Appellant because a large room with many inhabitants (which is what he believes the Shelter would provide) would not be good for Appellant.

Appellant’s █ believes a room with three or four people would be okay for Appellant. Ms. Headley testified that the Shelter, where Appellant previously resided, was designated as a last resort because Appellant does not have a home in the community and he does not have income. Respondent worked with Appellant on seeking an apartment, specifically adult supportive housing, but housing was not yet secured. Appellant will receive assistance in securing housing when he is discharged to the Shelter.

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, Rutland Nursing Home, is authorized to discharge Appellant in accordance with the █, 2021 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: New York, New York
July 13, 2021



Ann Gayle
Administrative Law Judge

████████ Rutland

TO:

████████ ██████████
c/o Rutland Nursing Home
585 Schenectady Avenue
Brooklyn, New York 11203

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