



Department of Health

ANDREW M. CUOMO
Governor

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

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

February 7, 2017

CERTIFIED MAIL/RETURN RECEIPT

Angela Green, SW
Haven Manor Nursing Home
1441 Gateway Boulevard
Far Rockaway, New York 11691

Anne Meyer, Esq.
Vera Institute of Justice
P.O. Box 2-5106
Brooklyn, New York 11202

Terri Orr, DSW
Beacon Rehabilitation and Nursing Center
140 Beach 113th Street
Rockaway Park, New York 11694

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:nm

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

Beacon Nursing and Rehabilitation Center,

Respondent,

to transfer her from a residential health care facility.

COPY

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Haven Manor Nursing Home
1441 Gateway Boulevard
Far Rockaway, New York 11691

Hearing Date:

February 2, 2017

Parties:

Beacon Nursing and Rehabilitation Center
By: Teresa Orr
Director of Social Work

██████████

By: Anne P. Meyer, Esq., Staff Attorney¹
Vera Institute Guardianship Project

Haven Manor Nursing Home
By: Angela Green
Director of Social Work

¹ Initially, Ms. Meyer represented Vera Institute Guardianship Project in her capacity of staff attorney by examining and cross-examining witnesses. When Ms. Meyer indicated that she wished to testify, the oath was administered.

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 Beacon Nursing and Rehabilitation 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. Respondent determined to, and did in fact, transfer or discharge [REDACTED] (“Appellant” or “Resident”) from care and treatment in its nursing home to another skilled facility, Haven Manor Nursing Home (“Haven”) on the grounds that the safety or health of individuals in the Facility would be endangered/her needs could be more appropriately met at Haven. Vera Institute Guardianship Project (“The Guardianship Project” or “Appellant’s Guardian”), on behalf of Appellant, appealed the discharge determination to the New York State Department of Health.

The post-discharge hearing on that appeal was held in accordance with 10 NYCRR §415.3(h). Pursuant to §415.3(h)(2)(iii)(b) the Facility has the burden of proving that the transfer was necessary and the discharge plan is appropriate.

This hearing was digitally recorded and transferred to a compact disc (“CD”); the CD has become part of the record. Erika Musgjerd, Case Manager at The Guardianship Project, and Anne P. Meyer, Staff Attorney at The Guardianship Project, testified for Appellant. Teresa Ann Orr, the Facility’s Director of Social Work, testified for Respondent. Angela Green, Haven’s Director of Social Services, and Ashley Dufort, Social Worker at Haven, testified for Haven. At the request of The Guardianship Project’s representatives at the hearing, Ms. Meyer and Ms.

Musgjerd, Appellant was present at the hearing but she did not testify or otherwise participate in the hearing.

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 and Transfer

Facility:

- 1: Psychiatric consultation
- 2: Resident Face Sheets
- 3: Letters from The Guardianship Project
- 4: Progress notes

Resident:

- A: Hon. Albert Tomei's Interim Decision and Order Appointing Guardian
- B: Hon. Albert Tomei's Order and Judgment Appointing Guardian

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

STATEMENT OF ISSUES

Respondent discharged Appellant to Haven on December 29, 2016. The initial issue to be determined in this proceeding is whether Appellant was transferred/discharged in accord with her rights pursuant to 10 NYCRR §415.3. If Appellant was denied her legal rights as delineated in this regulation, there is no reason to address the questions of whether the transfer/discharge was warranted and whether the discharge plan was appropriate.

FINDINGS OF FACT

Citations in parentheses refer to testimony ("T") of witnesses and exhibits ("Ex") found persuasive in arriving at a particular finding.

1. Respondent, Beacon Nursing and Rehabilitation Center, is a residential health care facility located in Rockaway Park, New York. (Ex I)
2. By Order and Judgment dated █ 2007, Appellant, █, now age █ was

determined to be a person requiring the appointment of a Guardian, and The Guardianship Project was appointed Appellant's Guardian. (Ex B; T Musgjerd, Meyer)

3. Appellant was admitted to the Facility on █ 2007. Appellant's diagnoses include █ and █ (Ex 1; T Orr, Musgjerd)

4. On █ 2016, Respondent determined to discharge Appellant to Haven on █ 2016. Respondent prepared a Notice of Discharge and Transfer ("Notice") to this effect but did not serve or otherwise provide Appellant's Guardian with such Notice. Respondent merely left a telephone message for Ayanna Lowe, a case manager at The Guardianship Project; Ms. Lowe did not return Respondent's call. (Ex I; T Orr, Musgjerd, Meyer)

5. On █, 2016, Respondent discharged Appellant to Haven, and left a telephone message for Ayanna Lowe; Ms. Lowe, whose last day of employment with The Guardianship Project was █ 2017, did not return Respondent's call. (T Orr, Musgjerd)

6. In █ Appellant's Guardian learned that Appellant had been discharged from the Facility; Appellant's Guardian subsequently requested an appeal of the discharge. (T Musgjerd)

7. Appellant has remained at Haven pending the outcome of this proceeding.

DISCUSSION AND CONCLUSION

10 NYCRR §415.3(h)(1)(iii)(a) provides that, before it transfers or discharges a resident, the facility shall notify the resident and designated representative of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. Subsections (iii) & (iv) of §415.3(h)(1) both require that all nursing home residents be provided with the notice outlined in §415.3(h) before transfer/discharge. Respondent was required to provide Appellant's Guardian with such Notice prior to the █ 2016 discharge date;

Respondent failed to do so. A voicemail message left on the day of discharge, for an employee of The Guardianship Project, does not satisfy the written notice requirements of §415.3(h).

I find that Appellant was denied her legal rights as delineated in §415.3(h). Accordingly, I did not address the questions of whether the transfer/discharge was warranted and whether the discharge plan was appropriate. Respondent, having failed to give Appellant appropriate notice of her rights pursuant to 10 NYCRR §415.3(h), must readmit Appellant, prior to admitting any other person, to the next available bed at the Facility.

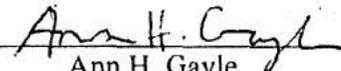
DECISION

The appeal by Appellant is GRANTED.

Respondent—Beacon Nursing and Rehabilitation Center must readmit Appellant to the next available bed at the Facility.

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
February 6, 2017


Ann H. Gayle
Administrative Law Judge

TO: Anne Meyer, Esq.
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Brooklyn, New York 11202

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