



Department of Health

ANDREW M. CUOMO
Governor

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

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

March 28, 2017

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED] 07724

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677 Broadway, 9th Floor
Albany, New York 12207

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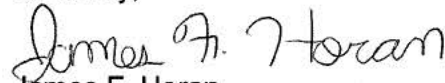
RE: In the Matter of [REDACTED] – Discharge Appeal

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: mw
Enclosure

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

ALJ:

- I: Notice of Hearing with attached Notice of Transfer or Discharge
- II: Bureau of Adjudication letter dated March 10, 2017
- III: Jackson Lewis letter dated March 8, 2017

Facility:

- 1: Notice of Transfer or Discharge
- 2: Dr. Palace’s undated letter
- 3: Certified copy of progress notes from Facility’s medical record for Appellant

Hospital:

- A: Dr. Pradhan’s progress notes
- B: Dr. Pradhan’s █ 2017 examination of Appellant

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

STATEMENT OF ISSUES

Respondent transferred Appellant to █ for emergency care on █, 2016, and █ subsequently transferred Appellant to Jacobi. When Jacobi deemed Appellant ready for discharge in █ 2017, Respondent refused to readmit Appellant to its Facility. The initial issue to be determined in this proceeding is whether Appellant was transferred/discharged in accord with his rights pursuant to 10 NYCRR §415.3. If Appellant was denied his 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, Hebrew Home for the Aged at Riverdale, is a residential health care facility located in Riverdale, New York. (Ex I)

2. Appellant was admitted to the Facility on ██████ 2010. (Ex 2)
3. On ██████, 2016, Appellant was found in a ██████ on his bathroom floor at the Facility following an apparent ██████ Respondent called 911 and administered care to Appellant. Appellant was then transferred from the Facility to ██████ via ambulance pursuant to the 911 call. Appellant was subsequently transferred from ██████ to Jacobi on or about ██████ 2017. (Ex 3; Ex B; T Palace, Pradhan, Appellant)
4. In a Notice of Transfer or Discharge dated ██████ 2017, Respondent determined to discharge Appellant to Jacobi, effective ██████, 2017. The stated grounds for transfer were that the transfer was necessary for Appellant's welfare as his needs could not be met at the Facility. (Ex 1)
5. Jacobi has determined that Appellant is currently stable and ready for discharge. Respondent refuses to readmit Appellant to its Facility. (T Palace, Pradhan)
6. Appellant has remained at Jacobi 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 and his representative with such Notice prior to the discharge date. A Transfer/ Discharge Notice dated ██████ 2017 for a discharge effective ██████ 2017, does not satisfy the written notice requirements of §415.3(h).

A finding that Appellant was denied his legal rights as delineated in §415.3(h), and a ruling that Respondent must expeditiously readmit Appellant to its Facility, was made by the ALJ on the record at the March 22, 2017 hearing. Appellant, Appellant's ██████ Respondent, and the Hospital agreed, on the record, that Appellant would be readmitted to the Facility on ██████, 2017, prior to receiving this written decision.

Having found that Appellant was denied his legal rights found in §415.3(h), the questions of whether the transfer/discharge was warranted and whether the discharge plan was appropriate will not be addressed.

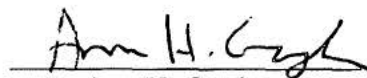
DECISION

The appeal by Appellant is GRANTED.

Respondent must readmit Appellant to its Facility.

This Decision, which confirms the oral decision made on the record on March 22, 2017, 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
March 27, 2017


Ann H. Gayle
Administrative Law Judge

TO: ██████
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