



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

August 29, 2017

CERTIFIED MAIL/RETURN RECEIPT

Nadia Gittens, Director of Social Work
Williamsbridge Manor
1540 Tomlinson Avenue
Bronx, New York 10461

[REDACTED]
c/o Williamsbridge Manor
1540 Tomlinson Avenue
Bronx, New York 10461

Barry Schechter
Ombudsman Office
841 Broadway
New York, New York 1003

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:
Enclosure

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

COPY

In the Matter of an Appeal pursuant to
10 NYCRR §415.3 by

██████████,

Appellant,

from a determination by

WILLIAMSBRIDGE MANOR,

Respondent,

to discharge her from a residential health care facility.

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Williamsbridge Manor
1540 Tomlinson Avenue
Bronx, New York 10461

Hearing Dates:

July 27, 2017
August 24, 2017

Parties:

Williamsbridge Manor
By: Nadia Gittens, Director of Social Services

██████████
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 Williamsbridge Manor (“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(h). Respondent determined to discharge █ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(a)(2) which provides, in pertinent part:

- (a) the resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident’s designated representative, determines that:
 - (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 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

A digital recording of the hearing was made and transferred to a compact disc (“CD”); the CD has become part of the record. Appellant testified for Appellant, and the following Facility representatives testified for Respondent: Nadia Gittens—Director of Social Work, Azadeh Zamiri, MD—Attending Physician, Patricia Badoo, RN—Director of Nursing, and Henry Heinemann—Assistant Administrator. Charmaine Hewitt, RN—Nurse Manager and Herika

Verdejo—Director of Rehabilitation were present at the hearing on July 27, and Barry Schechter of the Ombudsman’s office attended the hearing on August 24 to assist and support Appellant.

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 the Facility’s Discharge Notice attached
- II: Letter dated █, 2017

Facility:

- 1: Face Sheet
- 2: Resident’s Bill of Rights
- 3: Reports of Dr. Zamiri’s contact with Appellant on █ and █, 2017
- 4: Shelter information
- 5: Progress notes from █ to █, 2017
- 6: OT and PT evaluations and discharge notes from █ to █, 2017
- 7: Hospital discharge information, X-ray results, and care plan meeting note

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

ISSUE

Has Williamsbridge Manor established that the transfer is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (“T”) of witnesses and exhibits (“Ex”) found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejected in favor of the cited evidence.

- 1. Respondent, Williamsbridge Manor, is a residential health care facility located in Bronx, New York. (Ex I)

Williamsbridge

2. In or around [REDACTED] 2017, Appellant, age [REDACTED] became [REDACTED] when she was [REDACTED] from her [REDACTED] Appellant, to avoid going into a [REDACTED], [REDACTED] in the [REDACTED] of a building where her [REDACTED] resided. This building was in the same complex as the building from which Appellant was [REDACTED]. On or about [REDACTED] 2017, Appellant fell down the [REDACTED] in the hallway of the building where she was [REDACTED] and she was admitted to [REDACTED] Hospital for treatment of [REDACTED], she sustained from the fall. (Ex 7; T Gittens, Zamiri, Appellant)

3. Appellant was admitted to the Facility from [REDACTED] Hospital on [REDACTED] 2017, for short-term rehabilitation. Appellant, who is alert and oriented and independent in all her ADLs (activities of daily living), currently receives no skilled care at the Facility. She was discharged from PT and OT (physical and occupational therapy) on [REDACTED] 2017, when her highest practicable level of functioning was achieved. (Ex 2; Ex 3; T Gittens, Zamiri, Bando)

4. Appellant was scheduled to relocate to [REDACTED] on [REDACTED] 2017, to reside with her [REDACTED] and [REDACTED]. Appellant's [REDACTED] paid for an airline ticket for Appellant, but on [REDACTED] Appellant's [REDACTED] informed Appellant and Respondent that she would not allow Appellant to reside with her. (Ex 5; T Gittens, Appellant)

5. By notice dated [REDACTED] 2017, Respondent advised Appellant that it had determined to discharge her on the grounds that her health has improved sufficiently so that she no longer needs the services provided by the Facility. (Ex I)

6. Appellant ambulates with a [REDACTED] showers, brushes her teeth, combs her hair, transfers in and out of bed, feeds herself, toilets independently, and is capable of managing her medical appointments and medications. Appellant's past and present medical conditions include

[REDACTED]

and pain. These now stable conditions, as well as Appellant's possible need for outpatient physical therapy, and and/or other surgery in the future, can be treated in the community. (Ex 1; Ex 3; Ex 6; Ex 7; T Zamiri)

7. Respondent's discharge plan is to transfer Appellant to the Shelter ("Shelter") located at . (Ex I)

8. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's attending physician, that discharge to the community, including the Shelter, is appropriate for Appellant who is very independent and capable of managing her medications and medical treatment. Appellant will be discharged with a prescriptions for medications, and any remaining medications. Respondent will provide Appellant with transportation to the Shelter. (Ex 5; T Zamiri, Gittens, Badoo)

9. Appellant has remained at Williamsbridge Manor pending the outcome of this proceeding.

DISCUSSION

This hearing commenced on July 27, 2017, at which time Appellant asked for, and was granted, additional time to seek legal representation. Conference calls were held on August 2, 7, 11, 17, and 21, 2017, to discuss Appellant's progress in securing legal or other representation for the hearing. Appellant was not able to secure legal representation, however, Barry Schechter, a supervisor with the Ombudsman's office, met with Appellant at the Facility, and he assisted Appellant with her efforts to secure legal representation and with her alleged complaints about the Facility. Mr. Schechter participated in the conference calls and he assisted and supported Appellant at the hearing.

Numerous accusations were made by Appellant and Ms. Gittens toward and about each other during the hearing and on the conference calls. Additionally, documents accepted into evidence contain references to Appellant's alleged █, which Appellant adamantly denied. The ALJ curtailed all testimony about, and references to, these alleged incidents of █. The ALJ informed the Parties that testimony and references in the exhibits about Appellant's alleged behavior would not be given any weight or consideration in this Decision in that Respondent did not allege in its discharge notice that Appellant's behavior endangered the health or safety of individuals in the facility (Ex I).

The evidence presented by Respondent demonstrates that Appellant required short term rehabilitation upon admission in █ 2017, she completed those rehabilitative services in █ 2017, she is independent with her ADLs, and she is stable and her medical conditions can be treated in the community.

Appellant believes that her conditions, particularly her need to use a raised toilet seat (which the Facility disputes), her ongoing pain, the █ which is healing but not yet fully healed, and the ongoing issues she is experiencing with her █ and █ render her not ready for discharge at this time. Dr. Zamiri testified that while Appellant is likely to continue to have pain and issues with the sites of the █ and injuries, there is nothing more to be done in the Facility for Appellant's healed █ and █ her healing █ and pain and medication management. Dr. Zamiri testified very convincingly that at this time Appellant has no skilled needs and her medical issues can be addressed on an outpatient basis in the community.

When the plan for Appellant to live with her family in █ was thwarted by Appellant's █ the day before Appellant was to be discharged, Respondent and

Appellant discussed the possibility of discharge to an ██████████ program or residing with ██████████ in ██████████. Appellant is not interested in an ██████████ program, and residing with ██████████ is not an option at this time. Appellant is too ██████████ for placement in an assisted living facility, therefore such placement was not considered.

Respondent identified the Shelter placement as a last resort.

Appellant testified that her ██████████ are assisting her in her efforts to secure housing in the community, and that she is challenging the eviction from her apartment (which to this day remains vacant) in Court; Appellant is optimistic that she will be able to live in that apartment again, but currently there is no decision from the Court. Appellant does not wish to be discharged to the Shelter because she believes it is dangerous and she is "██████████ ██████████ [particularly her ██████████] in the Shelter where there are ██████████ Appellant is also concerned that she would have to leave the Shelter during daytime hours each day. When Ms. Gittens pointed out that the ██████████ Shelter, to which Appellant would be discharged, is a medical shelter that does not require its inhabitants to leave each day, Appellant responded that it is a dangerous shelter located ██████████."

Appellant receives no skilled care at the Facility; she makes all her own decisions, and she is independent with all her ADLs. The Shelter will assist Appellant with services such as housing, medical needs and evaluations, including evaluations for additional physical and other rehabilitative therapy and drug treatment, if necessary.

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

█ / Williamsbridge

DECISION

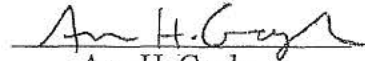
I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Williamsbridge Manor, is authorized to discharge Appellant, █, in accordance with its █ 2017 discharge notice. Such discharge shall occur no sooner than █, 2017, unless Appellant wishes to be discharged before September 7, 2017.

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
August 29, 2017


Ann H. Gayle
Administrative Law Judge

TO: Nadia Gittens, Director of Social Work
Williamsbridge Manor
1540 Tomlinson Avenue
Bronx, New York 10461

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