



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

November 22, 2017

CERTIFIED MAIL/RETURN RECEIPT

Jessica Almonte, DOS
Franklin Center for Rehab & Nursing
142 27 Franklin Avenue
Flushing, New York 11355

██████████
c/o Franklin Center for Rehab & Nursing
142 27 Franklin Avenue
Flushing, New York 11355

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: ISM
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

-----X
In the Matter of an Appeal, pursuant to :
10 NYCRR § 415.3, by :
 :
 [REDACTED], :
 :
 Appellant, :
 :
 from a determination by : DECISION
 :
 FRANKLIN CENTER FOR REHAB AND NURSING, :
 :
 Respondent, :
 :
 to discharge him from a residential health :
 care facility. :
-----X

Franklin Center for Rehab and Nursing ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED] [REDACTED] 2017, to [REDACTED] [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On November 14, 2017, a hearing was held before WILLIAM J. LYNCH, ESQ., ADMINISTRATIVE LAW JUDGE.

The hearing was held in accordance with the Public Health Law of the State of New York; Part 415 in Volume 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"); Part 483 of the United States Code of Federal Regulations ("CFR"); the New York State Administrative Procedure Act ("SAPA"); and 10 NYCRR Part 51.

Evidence was received and witnesses were examined. An audio recording of the proceeding was made. The hearing was held at the

Facility located at 142-27 Franklin Avenue, Flushing, New York.

The following individuals were present for the hearing: [REDACTED]

[REDACTED] Resident; Jessica Almonte, Director of Social Work; Faye Kaplovitz, Social Worker; Juliet Chang, R.N., Director of Nursing; Sergei Lapinel, M.D. Attending Physician; and Derek Murray, Administrator.

STATEMENT OF THE CASE

The Facility issued a determination proposing to discharge the Resident effective [REDACTED] 2017. The stated reason for the discharge was that the Resident's health had improved sufficiently so that he no longer required the services provided by a skilled nursing facility. The proposed discharge location was [REDACTED] Shelter in [REDACTED]. The Resident filed a timely request for an appeal of the discharge decision and has remained in the Facility pending this determination.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether the Facility has established a basis which permits the Resident's discharge from the Facility and whether the proposed discharge plan is appropriate. The Facility has the burden of proving its

case by substantial evidence (10 NYCRR § 415.3[h][2][iii], SAPA § 306[1]).

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Citations in parentheses refer to testimony or exhibits. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. The Resident is a 4█-year-old male who was admitted to the Facility on █, 2017, for rehabilitation following a █ █ of █ █ of a █ █ and the application of a █ (Facility 1; Recording @ 6:50).

2. The Resident can perform his own wound care and has been referred to a wound care clinic in the community for follow up medical care. (Facility 1, 2; Recording @ 15:00).

3. The Resident completed a program of physical therapy, and he now ambulates independently with a █ walker. He can perform all activities of daily living. (Facility Ex. 2; Recording @ 14:00).

4. The Facility's interdisciplinary care team determined that the Resident no longer required skilled nursing services and could safely be discharged. (Facility Ex. 1, 3).

5. The Resident's attending physician determined that the Resident was medically stable and agreed with the discharge plan. (Facility Ex. 3; Recording @ 6:55).

6. On [REDACTED] 2017, the Facility issued a discharge notice to the Resident which proposes discharge to the [REDACTED] Shelter in [REDACTED] (Facility Ex. 2).

ANALYSIS AND CONCLUSIONS

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR 415.3[h][1]). The Facility alleged that the Resident's discharge is permissible pursuant to 10 NYCRR 415(h)(1)(i)(a)(2), which states:

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.

The Facility established through testimony and documents that there is no reason for the Resident to remain in a skilled nursing facility and that the Resident's medical conditions can be managed on an outpatient basis. After completing a program of

rehabilitation, the Resident can independently perform all activities of daily living.

The Facility Social Worker assisted the Resident in procuring Supplemental Security Income (SSI) benefits. When the Resident was found eligible for SSI, the Social Worker made applications to several assisted living facilities. The Resident was accepted to [REDACTED], but he refused to accept discharge to that facility. The Social Worker attempted to find a placement for the Resident in several other facilities, but the others felt that he did not have a sufficient need for placement in an assisted living facility due to his independence with all activities and being only [REDACTED] years of age. The Facility's discharge plan includes providing medications, follow-up instructions and transportation to the [REDACTED] Shelter.

The Resident claimed that he needed to remain in the Facility because his [REDACTED] wound has not fully healed. However, the testimony of the Resident's attending physician and the nursing staff established that the Resident is capable of caring for the wound himself. In addition, the Facility has made a referral for the Resident to a wound care clinic where he can obtain medical assistance and monitoring.


Based upon the evidence produced at the hearing, I find that the Resident no longer needs to reside in a skilled nursing facility and that he can obtain any required follow-up medical care on an outpatient basis while living in the community.

DECISION AND ORDER

1. The Facility is authorized to discharge the Resident in accordance with its discharge plan on or after [REDACTED] [REDACTED] [REDACTED] 2017.

2. 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: Albany, New York
November 21, 2017



WILLIAM J. LYNCH
Administrative Law Judge