



Department of Health

ANDREW M. CUOMO
Governor

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

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

June 18, 2018

CERTIFIED MAIL/RETURN RECEIPT

Natalie Joseph, SW
Fairview Nursing Care Center
69-70 Grand Central Parkway
Forest Hills, New York 11375

[REDACTED]
Fairview Nursing Care Center
69-70 Grand Central Parkway
Forest Hills, New York 11375

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: cac
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

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

[REDACTED]

Appellant,

from a determination by

Fairview Nursing Care Center,

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AND
ORDER

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Hearing Location: Fairview Nursing Care Center
69-70 Grand Central Parkway
Forest Hills, New York 11375

Hearing Date: June 11, 2018

Parties: Fairview Nursing Care Center
By: Natalie Joseph, Social Worker

[REDACTED]

Pro Se

JURISDICTION

By notice dated May 16, 2018, Fairview Nursing Care Center (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (the Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(h).

HEARING RECORD

Facility witnesses: Merced Jarina, Physical Therapist
Dr. Bagdig Baghdassarian
Natalie M. Joseph, Case Manager
Semmer Espino, R.N., Director of Nursing

Facility exhibits: 1 [REDACTED] 2018 discharge notice)
2 (progress notes)
3 (physician's orders)
4 (medication administration record)
5 [REDACTED] 2018 rehabilitation summary)

Appellant witnesses: [REDACTED] Appellant
[REDACTED] Appellant's
[REDACTED] Appellant

Appellant exhibits: None

The notice of hearing and discharge notice were marked as ALJ Exhibit I. A digital recording of the hearing was made.

ISSUES

Has Fairview Nursing Care Center established that its determination to discharge the Appellant was necessary and the discharge plan appropriate?

¹The Facility withdrew its Exhibit 3 (nursing instructions pertaining to the Appellant), from evidence. (Recording @ 33:20.)

FINDINGS OF FACT

1. The Appellant is a [REDACTED] year-old male who was admitted to the Facility on [REDACTED] 2018. (Facility Exhibit 4; Recording @ 29:56.)

2. The Appellant's admitting diagnoses were [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Facility Exhibit 4; Recording @ 10:35.)

3. By notice dated [REDACTED] 2018, the Facility determined to discharge the Appellant on [REDACTED] 2018 because his health has improved sufficiently so that he "no longer needs the services of the facility." The notice proposes to discharge the Appellant to the [REDACTED] Shelter [REDACTED] (Facility Exhibit 1.)

4. The Appellant remains at Fairview Nursing Care Center pending the outcome of this appeal.

APPLICABLE LAW

A residential health care facility (also referred to in the regulations as a nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. PHL §§ 2801(2)&(3); 10 NYCRR § 415.2(k).

Regulations at 10 NYCRR § 415.3(h) describe the transfer and discharge rights of residential health care facility residents. They state, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility:

(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;

When a residential health care facility determines to discharge a resident because the resident's health has improved such that the resident no longer requires the facility's services, the facility must ensure that the resident's clinical record contains complete documentation made by the resident's physician and, as appropriate, by the resident's interdisciplinary care team. 10 NYCRR § 415.3(h)(1)(ii). The residential health care facility must prove by substantial evidence that the discharge was necessary, and the discharge plan was appropriate. 10 NYCRR § 415.3(h)(2)(iii); State Administrative Procedure Act § 306(1).

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] 2018 as a [REDACTED] patient with multiple diagnoses, including [REDACTED]

[REDACTED] (Facility Exhibits 2 and 4; Recording @ 10:35.) By notice dated [REDACTED] 2018, the Facility advised the Appellant of its determination to discharge him on [REDACTED] 2018 because his health has improved to the extent that he no longer requires the services provided by the Facility. (Facility Exhibit 1.)

The Appellant receives a continuous supply of [REDACTED] due to his diagnosis of [REDACTED] (Facility Exhibits 4, 5 and 6.) He ambulates for [REDACTED] distances, with supervision and frequent [REDACTED] periods, by using a [REDACTED] walker and [REDACTED]

[REDACTED] The Appellant also struggles with performing aspects of personal hygiene tasks

independently due to his [REDACTED] (Facility Exhibit 6; Recording @ 19:11.)

At the hearing, Dr. Baghdassarian, a Facility physician, asserted that the Appellant's health has much improved since he was first admitted. (Recording @ 9:27.) The Facility's Director of Nursing, Sommer Espino, confirmed that the Appellant's medical conditions are clinically stable. She explained that the Appellant's medication dosages and volume of [REDACTED] have not changed. (Recording @ 10:35.) Dr. Baghdassarian testified that the Appellant has no further need for services at the Facility. (Recording @ 9:20.)

On [REDACTED] 2018, the Appellant was discharged from all Facility-provided rehabilitative therapy because the Appellant was found to have "achieved his maximum level of function" with respect to his ability to perform activities of daily living and functional mobility. (Facility Exhibit 6.) Merced Jarena, the Facility's physical therapist, asserted that the Appellant's attainment of his therapy goals indicates that he can be safely discharged to a community-based setting. (Recording @ 28:15.) The Facility's discontinuance of the Appellant's rehabilitative therapy does not signify that the Appellant no longer requires the services of a skilled nursing facility.

The Appellant confirmed that his conditions have improved since his admission to the Facility. He emphasized his desire to become sufficiently physically independent to leave the Facility and return to work. However, he insisted that he requires additional help from the Facility in the form of additional physical therapy and further medically-supervised attempts to reduce his dependence upon [REDACTED]. The Appellant explained that he remains [REDACTED] and is unable to walk more than [REDACTED] distances. (Recording @ 19:11.) He

contended that he cannot [REDACTED] without [REDACTED] for several minutes to [REDACTED]

[REDACTED] (Recording @ 36:23.)

Although the record establishes that the Appellant's medical conditions have improved, the Facility has failed to establish that the Appellant's conditions have improved to the extent that he no longer requires the services of a skilled nursing facility. Dr. Baghdassarian explained that the Appellant will require continuous medication and [REDACTED]. Nevertheless, he insisted that the Appellant would be able to obtain the services currently provided by the Facility as an outpatient. (Recording @ 9:20.) Ms. Espino contended that the Appellant has reached his maximum potential and that the Appellant requires a lower level of care.

No witness testifying on behalf of the Facility refuted the Appellant's medical need for skilled nursing services, which he continues to receive onsite. (Recording @ 52:50.) Ms. Espino asserted that the Appellant's conditions have [REDACTED] and that he requires a facility designed to care for residents who require continued care. (Recording @ 1:02:55.) Residential health care facilities provide skilled nursing and other professional services to patients who are clinically stable. 10 NYCRR § 415.2(k). The record fails to establish a difference between the Facility and the long-term care setting described by Ms. Espino. Ms. Espino's testimony directly refutes the basis for the Facility's discharge determination.

Regarding its discharge plan, the Facility purports to discharge the Appellant to the [REDACTED] Shelter. (Facility Exhibit 1.) Since the Appellant did not meet financial eligibility criteria for assisted living facilities, the Facility's interdisciplinary team (including Dr. Baghdassarian, Ms. Espino, and Ms. Joseph) concluded that the Appellant could safely be discharged to a shelter. Dr. Baghdassarian confirmed that placement at a shelter would be

medically appropriate for the Appellant as long as he continues to receive his medications and

(Recording @ 28:02.)

Ms. Joseph, the Appellant's case manager at the Facility, explained that the Facility initially sought to transfer the Appellant to another nursing home. She asserted that other nursing homes provide "longer-term care," which the Facility normally does not offer residents. (Recording @ 24:02.) The Appellant's progress notes reflect that the efforts to transfer the Appellant to other local nursing homes began within four days of his initial admission. In the month of [REDACTED] the Facility contacted nine nursing homes for the Appellant's transfer, all of which rejected the Appellant's placement. (Facility Exhibit 2.) Ms. Joseph explained that the Facility was initially unable to provide services that the Appellant required, including [REDACTED] services. However, shortly after the unsuccessful transfer attempts in [REDACTED] the Facility began providing the required services to the Appellant. Ms. Joseph did not assert that the Appellant no longer needs those services. (Recording @ 58:32.)

Neither the Facility witnesses at the hearing nor the submitted documentation explained how the current discharge plan was deemed medically safe and appropriate for the Appellant when the Facility has already concurred that the Appellant requires continuous skilled nursing for a prolonged span of time. Ms. Espino surmised that the Appellant might be able to obtain help with activities of daily living in the home. Yet, she did not explain how the Appellant would obtain required rehabilitative therapies, monitoring of his [REDACTED] and assistance with activities of daily living at a shelter. (Recording @ 52:50.)

Although Facility social workers received assurances from an unnamed employee at the New York City Department of Homeless Services (DHS) that the Appellant's [REDACTED] would be accommodated at a shelter, the Facility has not submitted the Appellant's medical

documentation to DHS to verify the availability of a medically suitable shelter placement for the Appellant. (Recording @ 30:58.) The Facility was required to provide a discharge plan that addresses the Appellant's medical needs and how those needs will be met after discharge. 10 NYCRR § 415.3(h)(1)(vi). Facility staff have not ensured that the Appellant's medical needs would be accommodated at the shelter. (Recording @ 32:50.)

CONCLUSION

The Facility determined to discharge the Appellant because the Appellant's conditions are unlikely to improve further. The Appellant continues to require skilled nursing services, services which are provided by residential health care facilities. PHL §§ 2801(2)&(3); 10 NYCRR § 415.2(k). The stability of the Appellant's chronic medical conditions alone is not a permissible basis for his discharge. 10 NYCRR § 415.3(h)(1)(i).

The Facility has also failed to establish that it has devised an appropriate discharge plan for the Appellant. The Appellant's medical conditions are severe and he has difficulty with performing multiple activities of daily living independently. He is continuously dependent upon

██████████, may ambulate for only ██████████ distances with supervision ██████████

██████████ and while ██████████

Although the Facility sought to

effectuate the Appellant's transfer to another nursing home, the Facility has now determined to discharge the Appellant to a men's shelter. The Facility's discharge plan fails to account for the Appellant's continued need for skilled nursing services, and does not address how the Appellant would continue to receive those services at a shelter.

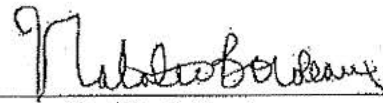
The Facility has failed to establish that the Appellant's health has improved sufficiently that he no longer requires the care provided by a nursing home, and that transferring him to a men's shelter is an appropriate discharge plan.

DECISION AND ORDER

Fairview Nursing Care Center has not established that its determination to discharge the Appellant was necessary and its discharge plan appropriate.

1. Fairview Nursing Care Center is not authorized to discharge the Appellant based upon its ██████████ 2018 determination.

Dated: June 15, 2018
New York, New York



Natalie J. Bordeaux
Administrative Law Judge