



Department of Health

ANDREW M. CUOMO
Governor

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

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

January 28, 2019

CERTIFIED MAIL/RETURN RECEIPT

Frieda Morales, Social Worker
New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002

[REDACTED]
c/o New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002

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: cmg
Enclosure

STATE OF NEW YORK: DEPARTMENT OF HEALTH

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

████████████████████

Appellant,

ORIGINAL

from a determination by

DECISION

**NEW GOUVERNEUR HOSPITAL SNF
Respondent,**

to discharge him from a residential health care facility.

Hearing Before:

Jean T. Carney
Administrative Law Judge

Held at:

New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002

Hearing Date:

December 13, 2018

Parties:

New Gouverneur Hospital SNF
By: Susan Sales, FACHE
CEO Post Acute/Skilled Nursing Facility

████████████████████, Appellant

By: ██████████, Appellant's ██████████

JURISDICTION

By notice dated [REDACTED], 2018, New Gouverneur Hospital SNF (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) §415.3(h).

HEARING RECORD

ALJ Exhibit:	I – Notice of Hearing
Facility Exhibits:	1 – Physical Therapy Assessment Summary 2 – Medical Progress Note 3 - Admission History and Physical
Facility Witnesses:	Danny Wong, Director of Rehab Services Irina Powers, M.D., Attending Physician Sandra Wilson, Head Nurse Frieda Morales, Social Worker
Appellant’s Exhibits:	None
Appellant’s Witness:	[REDACTED]

A digital recording of the proceeding was made and made part of the record.

ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2018 from [REDACTED] Hospital for short term occupational and physical therapy resulting from a [REDACTED] and [REDACTED] (Exhibits 1 and 3).

2. Upon admission to the Facility, the Appellant required maximum assistance with bed mobility and transfers. She was able to ambulate a distance of [REDACTED] foot with a rolling walker and [REDACTED] assistance. Regarding activities of daily living (ADLs), the Appellant required maximum assistance with toileting, dressing [REDACTED] body, bathing, and commode transfer; and [REDACTED] assistance with [REDACTED] body dressing. (Exhibit 1; Hearing testimony of Danny Wong @ 6:33).

3. The Appellant was discharged from therapy on [REDACTED], 2018, having reached her maximum potential in ambulation, and independence or minimal assistance with ADLs. (Exhibit 1; Hearing testimony of Danny Wong @ 7:15; and Sandra Williams @ 17:15).

4. The Appellant is medically stable, and her care team has determined that she does not need skilled nursing care at this time. (Hearing testimony of Dr. Powers @ 14:53)

5. Prior to her admission, the Appellant was living with her [REDACTED] but that was not a viable option for discharge. The facility gave the Appellant information regarding senior living resources, and once Medicaid was approved, the facility also encouraged the Appellant to apply to assisted living facilities. The Appellant did not agree to apply for assisted living. (Hearing testimony of Freda Morales @19:26).

6. The facility applied to the shelter for an appropriate placement for the Appellant, and was informed that the [REDACTED] Shelter on [REDACTED] in the [REDACTED] would be appropriate because it has an elevator, and can accommodate the Appellant's rolling walker. (Exhibit I; Hearing testimony of Freda Morales @ 23:17).

7. The Appellant wants to wait until an apartment becomes available rather than being discharged to a shelter. She has been placed on several waiting lists for apartments, but there is no indication of how long before an apartment will be available. (Hearing testimony of [REDACTED] @ 26:08).

APPLICABLE LAW

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

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 alleges 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.

Under the hearing procedures at Title 10 NYCRR §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge is necessary, and the plan is appropriate. Under the New York State Administrative Procedures Act (SAPA) §306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision. (*Stoker v. Tarantino*, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3rd Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

DISCUSSION

The Facility has shown that the Appellant's health has improved sufficiently so that she no longer requires skilled nursing care, and may be discharged. Upon admittance, the Appellant required short term rehabilitation services. She was successfully discharged from physical and occupational therapy on [REDACTED] 2018, after achieving her maximum potential. The Appellant has demonstrated the ability to safely perform ADLs independently, and ambulate up to [REDACTED] feet with minimal assistance. The Appellant's attending physician testified that the Appellant is medically stable, and no longer needs skilled nursing care. Accordingly, the Facility has proven that the Appellant's health has improved sufficiently, and she no longer requires the services of a skilled nursing facility.

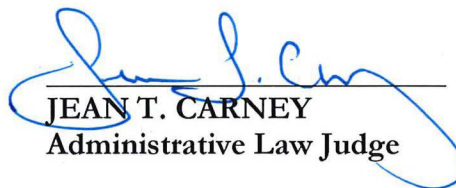
The Facility's determination to discharge the Appellant to the [REDACTED] Shelter is also appropriate. Although the Facility made efforts to find alternate discharge options, such as her [REDACTED] residence, or an apartment, the evidence in the record establish that those options are not viable. The Appellant objects to being discharged to the shelter system, and would like to wait until an apartment becomes available for her to move into. However, the Appellant has limited financial resources, and although she has been placed on several public housing waiting lists, it could take years for an apartment to become available. Therefore, the Appellant's preferred outcome is not an appropriate discharge plan. Although she initially opposed being discharged to assisted living, during the hearing the Appellant became more open to that option; but she was not willing to commit to that process despite the Facility's willingness to work with the Appellant toward that goal. An assisted living facility may be the most appropriate discharge plan, but unless the Appellant agrees to take the necessary steps to apply to an assisted living facility, she cannot be ordered into one. Therefore, the only appropriate option is discharge to the shelter system.

DECISION

New Gouverneur Hospital SNF has established that its determination to discharge the Appellant was correct, and that transfer to the shelter system is appropriate.

1. New Gouverneur Hospital SNF is authorized to discharge the Appellant on or before [REDACTED] 2019, to the [REDACTED] Shelter located at [REDACTED] [REDACTED], in accordance with its discharge plan dated [REDACTED] 2018.
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.

**DATED: Albany, New York
January 28, 2019**


JEAN T. CARNEY
Administrative Law Judge

TO: [REDACTED]
C/O New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002

[REDACTED]
[REDACTED]
[REDACTED]

Susan Sales, FACHE
CEO Post Acute/Skilled Nursing Facility
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