



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 24, 2019

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Livingston Hills Nursing &
Rehabilitation Center
2781 Route 9
Livingston, New York 12541

Jennefer Hoey, DON
Livingston Hills Nursing &
Rehabilitation Center
2781 Route 9
Livingston, New York 12541

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: cmg
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

LIVINGSTON HILLS NURSING
AND REHABILITATION CENTER

Respondent,

to discharge him from a residential health :
care facility. :

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ORIGINAL

DECISION

Hearing Before:

Matthew C. Hall
Administrative Law Judge

Held at:

Livingston Hills Nursing
And Rehabilitation Center
2781 Route 9
Livingston, New York 12541

Hearing Date:

January 10, 2019

Parties:

Livingston Hills Nursing
And Rehabilitation Center
By: Jennefer Hoey, D.O.N.

[Redacted]

Pro Se

JURISDICTION

By notice dated [REDACTED] 2019, Livingston Hills Nursing and Rehabilitation Center (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge Thomas Ahl (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) § 415.3(h).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing

Facility Exhibits: 1 - Admission Record, Patient Review Instrument, Transfer Discharge Summary and Discharge Medication List (11-2-18)

2 - Admission Record, Progress Notes and Discharge Notice (1-7-19)

Facility Witnesses: Jennefer Hoey - Director of Nursing
Ulka Patel - Director of Physical Therapy
Christopher Roberts - Administrator
Shannon Markham - Discharge Coordinator

Appellant Exhibits: A - Report of Incident Verification
B - Violation Complaint

Appellant Witness: Appellant testified on his own behalf

ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its 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. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant is a [REDACTED]-year-old man who was admitted to the Facility on [REDACTED] [REDACTED] 2018, for subacute short-term rehabilitation due to [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Ex. 2, T. Roberts, Patel, Hoey, Markham.)

2. The Facility determined to discharge the Appellant to his apartment located in [REDACTED] [REDACTED] (Ex. 2, T. Roberts.)

3. Upon admission to the Facility, the Appellant required skilled nursing care for rehabilitation after discharge from [REDACTED] [REDACTED] Hospital where he was treated for [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Initially, the Appellant could only ambulate up to [REDACTED] feet without the use of a wheelchair. He required

██████████ oxygen therapy and he had ██████████ pain and ██████████ ██████████. (Ex. 1, 2, T. Appellant.)

4. After physical and occupational therapy at the Facility, the Appellant is now able to ambulate up to ██████████ feet without the use of a wheelchair and he often removes his external oxygen supply. He still complains of ██████████ pain, but reports that the pain level has decreased from "██████████" on a scale of 1 to 10, to ██████████. He is able to independently coordinate his own ██████████ pain treatment on an outpatient basis. (Ex. 2, T. Hoey, Markham.)

5. The Appellant is currently independent in his Activities of Daily Living (ADLs). (Ex. 4, T. Markham, Hoey, Patel.)

6. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending Physician, that discharge to his home is appropriate for Appellant. (Ex. 2, T. Hoey, Markham, Patel, Roberts.)

7. By notice dated ██████████, 2019, the Facility determined to discharge the Appellant on ██████████ ██████████ 2019 because the resident's "health has improved sufficiently so that the resident no longer needs the services provided by the facility." (Ex. 2.)

8. The Appellant appealed the Facility's determination and remains at the Facility pending the outcome of this appeal. (Ex. 2, T. Hoey, Markham, Patel, Roberts.)

APPLICABLE LAW

A residential health care facility (also referred to in the Department of Health Rules and Regulations 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)(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 alleged that the Resident's discharge is permissible pursuant to 10 NYCRR § 415.3(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 necessary and 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 a 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.

DISCUSSION

Reason for Discharge

Regarding whether the resident's health improved sufficiently and the resident no longer requires the services of a skilled nursing facility:

The Appellant was admitted to the Facility on [REDACTED] 2018 for sub-acute rehabilitation due to [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] The Appellant completed rehabilitation and during his time at the Facility, his health improved to the point where he no longer needed skilled nursing care.

Ulka Patel, the Director of Rehabilitation at the Facility, testified that, upon admission to the Facility, the Appellant could only ambulate without a wheelchair about [REDACTED] feet with assistance from Facility staff. He also had [REDACTED] and required [REDACTED] oxygen [REDACTED] [REDACTED] [REDACTED]. He had [REDACTED] [REDACTED] pain and reported a pain level of "[REDACTED]" on a scale of 1-10."

This was corroborated by the Progress and Discharge Summary. (Ex. 2.) After therapy, however, the Appellant is now able to ambulate up to [REDACTED] feet without the use of a wheelchair and with no assistance. The Appellant is also independent in his ADLs and is able to coordinate and arrange transportation to outpatient appointments which may be necessary in the future.

Dr. Imtiaz Mallick, the Facility's attending physician provided, "In my opinion, this patient can be discharged and he can manage his medications and self-administer the needed care and has the cognitive skills ... to get outpatient therapy and medical care." (Ex. 2.) In addition to Dr. Mallick's opinion, Jennefer Hoey (Director of Nursing), Ulka Patel (Director of Rehabilitation), Shannon Markham (L.P.N. Discharge Coordinator), and Christopher Roberts (Administrator), all agreed that the Appellant "no longer requires the services of a skilled nursing facility" and was ready to be discharged. (Ex. 2, T. Hoey, Patel, Markham, Roberts.)

Accordingly, the Facility has proven that the Appellant's health has improved sufficiently and he no longer requires the services of a skilled nursing facility.

Discharge Location

The Appellant admits that he has no desire to remain at the Facility, but would instead prefer to be transferred to another facility closer to his home in [REDACTED]. In order to be transferred to another facility however, the Appellant would need to be referred to another facility by his current one. As stated above, however, none of the medical professionals at the Facility feel that the Appellant requires skilled nursing at this time. Therefore, the Facility could not in good faith refer the Appellant to another nursing home.

The Facility intends to discharge the Appellant to his apartment where he previously resided before his initial hospital stay. When asked if the Appellant's apartment was a safe discharge location, the Facility's medical staff agreed that it was. (T. Hoey, Patel, Markham, Roberts.) Dr. Mallick provided, "This patient is able to self-administer his medications and is independent enough to live on his own, provided he maintains his scheduled appointments with his physicians." (Ex. 2)

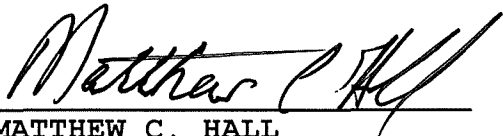
Accordingly, the Facility has proven that its plan to discharge the Appellant to his apartment is appropriate.

DECISION

Livingston Hills Nursing and Rehabilitation Center has established that its determination to discharge [REDACTED] was correct, and that transfer to his apartment is appropriate.

1. Livingston Hills Nursing and Rehabilitation Center is authorized to discharge [REDACTED] in accordance with its discharge plan on or after [REDACTED] 2019.
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 23, 2019


MATTHEW C. HALL
Administrative Law Judge

To: [REDACTED]
c/o Livingston Hills Nursing and Rehabilitation Center
2781 Route 9
Livingston, New York 12541

Ms. Jennefer Hoey, Director of Nursing
Livingston Hills Nursing and Rehabilitation Center
2781 Route 9
Livingston, New York 12541