



Department of Health

ANDREW M. CUOMO
Governor

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

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

May 14, 2019

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Gold Crest Care Center
2316 Bruner Avenue
Bronx, New York 10469

Suzette Henry
Gold Crest Care Center
2316 Bruner Avenue
Bronx, New York 10469

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

In the Matter of an Appeal pursuant to 10 NYCRR §415.3 by :
:  :
: Appellant, :
: from a determination by :
: **Gold Crest Care Center,** :
: Respondent, :
: to discharge him from a residential health care facility. :
:

COPY

DECISION

Hearing Before: Ann H. Gayle
Administrative Law Judge

Held at: Gold Crest Care Center
2316 Bruner Avenue
Bronx, New York 10469

Hearing Date: May 9, 2019

Parties: Gold Crest Care Center
By: Suzette Henry, Social Worker


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 Gold Crest Care Center (“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 George Texeira (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(b), which provides, in pertinent part:

Transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third-party insurance) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility the facility may charge a resident only allowable charges under Medicaid. Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the funds.

Appellant appealed the discharge determination to the New York State Department of Health (“NYSDOH”), and a hearing on that appeal was held. Pursuant to §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate; the standard of proof is substantial evidence. State Administrative Procedure Act §306.1. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact; it is less than a preponderance of the evidence but more than mere surmise, conjecture or speculation... Put differently, there must be a rational basis for the decision. Stoker v. Tarentino, 101 A.D.2d 651, 652, 475 N.Y.S.2d 562, 564 [App. Div. 3d Dept. 1984], mod. 64 N.Y.2d 994, 489 N.Y.S.2d 43.

A digital recording of the hearing was made part of the record. Appellant appeared and testified on his own behalf. Social Worker Suzette Henry, Medicaid Coordinator Sandra Etwaru, Director of Rehabilitation Sandy Ruiz, and Administrator Mark Salamon testified for Respondent, and Nurse Manager Margaret Plattie was present for a portion of the hearing.

The following documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ, Facility, and Appellant Exhibits:

ALJ

I: Notice of Hearing with attached Notice of Discharge/Transfer

Facility:

- 1: █ 2019 Medicaid budget letter
- 2: █ 2019 bill
- 3: █ 2019 bill

Appellant:

A: HealthFirst approval for █ to █/2018 hospital admission

ISSUE

Has Gold Crest Care Center established that the discharge 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. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Respondent, Gold Crest Care Center, is a residential health care facility located in Bronx, New York. (Ex I)
2. Appellant, █, age █ was admitted to the Facility on █, 2018, following a hospitalization at █ Hospital. MEDS established Appellant’s NAMI (Net Available Monthly Income) to be \$█ per month effective █ 2019 (“budget letter”).

would not go to ██████████ because he needs to be near his family, and that he is actively searching for housing arrangements in the community. Ms. Henry and Mr. Salamon testified that PRIs (Patient Review Instruments) were sent to numerous facilities throughout New York State, including Appellant's preferred facility, ██████████ ██████████. Appellant was accepted by ██████████ and ██████████, and ██████████ in the ██████████ ("██████████ Throughout the course of the hearing, Ms. Henry attempted to ascertain if a bed at Lawrence was still available for Appellant; the parties agreed to work together to attempt to secure a facility closer to Appellant's home; and Ms. Henry continually apprised Appellant that several facilities expressed reluctance to accept Appellant due to his history of nonpayment of his NAMI. The parties planned to call ██████████ together from a speaker phone, subsequent to the hearing, to ascertain if ██████████ would reconsider accepting Appellant.

In addition to exploring transfer to another facility, Ms. Henry and Appellant explored community housing. Living with family members was not an option as recently as last month; ██████████ believed Appellant was a good candidate but did not accept him in part because of his nonpayment of his NAMI; and a ██████████ 2018 application to ██████████ is pending. Furthermore, Appellant, who is wheelchair bound, cannot return to his home which has multiple flights of stairs. Appellant was discharged from physical therapy when he reached his maximum potential, but Mr. Salamon testified that Appellant would be reevaluated to determine if Appellant is a candidate for additional rehabilitative services.

CONCLUSION

Respondent has proven that Appellant has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third-party insurance) his stay at the

Gold Crest

facility. Appellant's NAMI, his Social Security benefit, is available, and Appellant refuses to pay. Respondent has also proven that Wellsville is an appropriate discharge location for Appellant.

DECISION

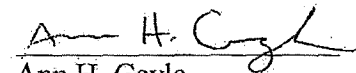
I find that the Facility has proved by substantial evidence that the discharge is necessary.

The appeal by Appellant is therefore DENIED.

Respondent, Gold Crest Care Center, is authorized to discharge Appellant in accordance with the [REDACTED] 2019 Discharge Notice. The discharge shall occur no sooner than [REDACTED] 2019, in order to give Appellant an opportunity to make arrangements for housing in the community. Appellant may leave the Facility sooner than [REDACTED], 2019, if housing or transfer to another facility is secured, or for any other reason Appellant chooses to leave.

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
May 14, 2019


Ann H. Gayle
Administrative Law Judge

TO: [REDACTED]
c/o Gold Crest Care Center
2316 Bruner Avenue
Bronx, New York 10469

Suzette Henry
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