



Department
of Health

ANDREW M. CUOMO
Governor

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

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

July 29, 2019

CERTIFIED MAIL/RETURN RECEIPT

Kareem Hendrix
The Citadel
3400-26 Cannon Place
Bronx, New York 10463

[REDACTED]
c/o The Citadel
3400-26 Cannon Place
Bronx, New York 10463

[REDACTED]

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,

from a determination by

THE CITADEL AT KINGSBRIDGE
NURSING AND REHABILITATION CENTER

Respondent;

to discharge her from a residential health facility

ORIGINAL

DECISION

The Citadel at Kingsbridge Nursing and Rehabilitation Center (Facility) issued a Notice of Transfer/Discharge, dated ██████████ 2019, to ██████████ (Resident). ██████████, the Resident's ██████████ appealed the Facility's proposed discharge. Administrative Law Judge (ALJ) William J. Lynch, Esq., held a hearing on June 6, 2019. The Hearing was held in accordance with the Public Health Law of the State of New York; Parts 51 and 415 of 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); and the New York State Administrative Procedure Act (SAPA). Evidence was received; witnesses were sworn or affirmed and examined. An audio recording of the proceeding was made.

The following individuals attended the hearing: ██████████, Resident; ██████████ ██████████ the Resident's ██████████ ██████████, Ms. ██████████; Kareem Hendrix, Director of Social Work; Eduardo Domingo, R.N., Associate Director of Nursing; Patricia Constantine, R.N., Director of Nursing; Hershey Bernath, Assistant Administrator; Bernard Chrisphonte, Administrator.

ISSUES

The Facility determined the Resident's health had improved sufficiently so that she no longer needed its services and proposed discharging the Resident to her apartment. The issues to be determined in this proceeding are whether the proposed discharge is necessary and whether the discharge plan is appropriate. Respondent has the burden of proving its case by substantial evidence (SAPA § 306[1], 10 NYCRR § 415.3[h][2][iii]).

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 the audio recording of the hearing or exhibits. These citations represent evidence found persuasive in arriving at a particular finding.

1. The Resident is a [REDACTED]-year-old female admitted to the Facility on [REDACTED] 2018, for a period of antibiotic treatment. Due to a decline in her physical status, she then required restorative rehabilitation to improve her gait, balance and endurance. The Resident also suffered an [REDACTED] [REDACTED] which required treatment. (Facility Ex. 1; Recording @ 5:45.)
2. The Resident completed a course of rehabilitation on [REDACTED], 2019. She demonstrated modified independence with mobility and can ambulate with a cane, but she requires assistance with set-up for the activities of daily living. (Facility Ex. 4; Recording @ 7:50.)
3. The Resident's weight and vital signs have stabilized, and her attending physician has determined that she is ready for discharge back to the community. (Facility Ex. 2; Recording @ 8:45.)
4. The Resident visited an assisted living facility, but she does not want to reside in that type of setting. (Recording @ 11:00.)

5. The Resident wants to return to the apartment which she shares with her [REDACTED] The Resident is on the lease and has continued to pay her share of the rent. (Recording @ 16:00.)

6. The Facility Social Worker arranged for an evaluation at the Facility to determine whether the Resident would be able to return to her apartment with Medicaid Long Term Care Program services (MLTC) in place, and the Resident was found eligible. However, the Resident advised the Facility social worker on [REDACTED] 2019 that she did not want to receive home care services because she was able to perform all activities of daily living independently. Based on this statement, the MLTC Program's further assessment of the Resident's apartment was not completed. (Recording @ 10:30.)

7. The Resident's [REDACTED] requested this appeal because her work schedule limits the amount of time she will be available in the apartment, and she expressed her concern that appropriate home care services are not in place. (Recording @ 14:45.)

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]). In this instance, 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 has established that the Resident no longer needs placement in a skilled nursing facility. The Resident completed a course on antibiotic therapy and restorative rehabilitation, and she is medically stable. She can ambulate with a cane and perform her activities of daily living, but she has modified mobility and continues to require assistance with set-up for those activities.

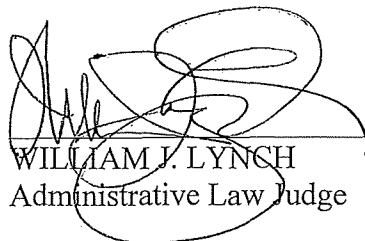
At the hearing, the Resident's [REDACTED] stated that she works two jobs and expressed concern with leaving her [REDACTED] alone in the apartment during those hours. The Resident claimed that she could function independently in the apartment without assistance, but she then acknowledged her [REDACTED] concerns and stated that she was not opposed to having home health services put in place for her return to the apartment. Therefore, I issued an Interim Decision to allow additional time for the Facility to again attempt to arrange to have services in place to ensure the Resident's safety in her apartment.

In a conference call on July 26, 2019, the Facility's Social Work confirmed that the MLTC Program has conducted an apartment assessment and determined that the apartment is safe for the Resident and that six hours of home care services would be appropriate. In the conference call, the Resident's daughter continued to express safety concerns, but the Resident stated she is ready to return to her home with the services that have been arranged by the Facility. At the time of discharge, the Facility agreed that it will arrange transportation to the Resident's home, have prescriptions sent to the Resident's pharmacy in the community, and provide assistance in establishing follow up appointments for medical care.

DECISION AND ORDER

1. The Facility is authorized to discharge the Resident in accordance with its discharge plan.

DATED: Albany, New York
July 29, 2019


WILLIAM J. LYNCH
Administrative Law Judge