



Department of Health

ANDREW M. CUOMO
Governor

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

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

September 26, 2019

CERTIFIED MAIL/RETURN RECEIPT

Maureen Peters, DSW
Silvercrest Center for Nursing and Rehabilitation
144-45 87th Avenue
Briarwood, New York 11435

Gina Toliver, Care Manager
NADAP
1 Smith Street, 3rd Floor
Brooklyn, New York 11201

██████████
c/o Silvercrest Center for Nursing
and Rehabilitation
144-45 87th Avenue
Briarwood, New York 11435

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

[REDACTED]

Appellant,

from a determination by

**The Silvercrest Center for Nursing
and Rehabilitation**

Respondent,

to discharge her from a residential
health care facility.

ORIGINAL

DECISION

Hearing Before:

Natalie J. Bordeaux
Administrative Law Judge

Held at:

The Silvercrest Center for Nursing and Rehabilitation
144-45 87th Avenue
Briarwood, New York 11435

Hearing Date:

September 16, 2019

Parties:

The Silvercrest Center for Nursing and Rehabilitation

By: Maureen Peters, Director of Social Work
144-45 87th Avenue
Briarwood, New York 11435

[REDACTED]

By: Gina Toliver, Care Manager
NADAP
1 Smith Street, 3rd Floor
Brooklyn, New York 11201

JURISDICTION

By notice dated [REDACTED], 2019, The Silvercrest Center for Nursing and Rehabilitation (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, 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: Gale Halley, Nursing Supervisor
Antonet Dawes, Social Worker
Sharon Cauilan, Physical Therapist
Lorna Laurent, Social Worker

Facility exhibits: 1-3

Appellant witnesses: [REDACTED], Appellant
Gina Toliver, Care Manager, NADAP

The notice of hearing and the accompanying cover letter were marked as ALJ Exhibit I. A digital recording of the hearing was made (1:06:46 in duration).

ISSUES

Has The Silvercrest Center for Nursing and Rehabilitation established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female who was transferred from [REDACTED] Hospital to the Facility on [REDACTED], 2019 for short-term rehabilitation, primarily antibiotic therapy. (Exhibit 1; Recording @ 8:05.)
2. By notice dated [REDACTED] 2019, the Facility determined to discharge the Appellant on [REDACTED], 2019 because her health has improved sufficiently that she no longer requires the

services provided by the Facility. The notice proposes to discharge the Appellant to her apartment in ██████████. (Exhibit 3.)

3. The Appellant does not require nursing home care. She has met all therapeutic goals and has attained her maximum level of functioning. (Exhibit 1; Recording @ 4:42, 18:20, 42:58.)

4. The Appellant can independently perform most activities of daily living, including ambulation with use of an assistive device, personal hygiene, and eating. (Recording @ 8:55.)

5. The Appellant's clinical record contains documentation from the Appellant's physician and interdisciplinary care team that the Appellant can be safely discharged to her home. (Exhibits 1 and 2.)

6. The Appellant remains at the Facility 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. Public Health Law §§ 2801(2)-(3); 10 NYCRR § 415.2(k).

Department 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;

The residential health care facility has the burden of proving by substantial evidence that the discharge determination was correct and the discharge plan appropriate. 10 NYCRR § 415.3(h)(2)(iii); State Administrative Procedure Act § 306(1).

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] 2019 for short-term rehabilitation, primarily antibiotic therapy to aid the recovery of a [REDACTED] wound in her [REDACTED]. She has completed all prescribed antibiotics. Her [REDACTED] wound is healing and [REDACTED] in size since the date of admission. (Recording @ 8:05.) The Appellant is no longer receiving skilled services at the facility and has no need for nursing care. (Recording @ 4:26.)

Although not the basis for her admission, the Appellant is also diagnosed with [REDACTED]. Her medical conditions are all stable and can be properly treated in the community. She can care for her [REDACTED] wound without assistance. (Exhibit 2; Recording @ 18:00.)

During her stay at the facility, the Appellant also received physical and occupational therapies, both of which she successfully completed by [REDACTED] 2019. The Appellant is independently able to perform many activities of daily living, including eating, personal hygiene, and medication management. (Recording @ 8:55.) She is currently able to ambulate at least 100 feet with the use of an assistive device. (Exhibit 1.) Staff in the rehabilitation and nursing disciplines have also determined by observation that the Appellant does not require assistance with toileting. (Recording @ 10:20.)

At the hearing, the Appellant insisted that she receives, and continues to require, assistance with activities of daily living, such as toileting and bathing. (Recording @ 22:20.) She asserted that Facility staff, including physical therapist Sharon Cauilan, hold on to her shirt as she walks, a claim which Ms. Cauilan denied. (Recording @ 31:02, 43:20.) Although the Appellant contended that she needs additional physical therapy, the Appellant recently refused rehabilitative training for tasks with which she now claims to require assistance. (Recording @ 47:26.) Specifically, she rejected instruction on completing bathtub transfers and toileting. (Exhibit 1; Recording @ 34:36.)

The Appellant has reached her maximum functioning level. Further therapy may be obtained in a community setting. (Recording @ 50:16.) The Appellant's need for assistance with certain activities of daily living, when unaccompanied by a need for skilled nursing services, does not justify her continued stay at the facility. The Facility has established that the Appellant's condition has improved so that she no longer requires the services of a skilled nursing facility.

The Facility proposes to discharge the Appellant to her apartment in [REDACTED] [REDACTED]. (Exhibit 3.) Her social worker has already alerted the Appellant's health insurance plan of her possible discharge and need for assistance with activities of daily living in the home. Upon discharge, the Appellant's health plan will temporarily authorize the Appellant to receive a certain number of hours of personal care assistance per week while awaiting the results of an at-home nursing assessment of the Appellant's abilities and needs. (Recording @ 14:20.)

The Appellant opposes the discharge plan, mainly because she is afraid of being in her apartment unattended. At the hearing, the Appellant contended that she cannot walk to her bathroom without assistance and cannot clean herself after toileting. However, the Facility's

evidence and the Appellant's refusal of training for these activities of daily living show that her claims are not accurate. The Appellant also expressed fear of getting out of bed when she is alone. (Recording @ 30:07.)

Nursing Supervisor Gale Halley confirmed that the Appellant had voiced similar concerns during a discharge planning meeting. Rehabilitation staff recommended the use of additional assistive devices, such as a bedside commode, to encourage the Appellant's independence. Guidance regarding commode use will be provided by the Facility before the Appellant's discharge if she is open to receiving it. (Recording @ 32:55.)

Gina Toliver, the Appellant's care manager in the community, agrees with the Facility's determination. (Recording @ 59:53.) Although she believes that the Appellant should receive personal care services of at least 6 hours per day, 5 days each week, Ms. Toliver acknowledged that no health plan can make such a determination until the Appellant is discharged to her apartment and evaluated by a nurse assessor who observes the Appellant's physical capabilities and limitations. (Recording @ 39:51.) The nursing assessment will also determine whether assistive devices are needed for the Appellant's safety in her home. (Recording @ 51:15.)

The proposed discharge plan meets the Appellant's medical needs and addresses how those needs will be met after discharge, as required by 10 NYCRR § 415.3(h)(1)(vi). The Facility has therefore established that its discharge plan is appropriate.

DECISION

The Silvercrest Center for Nursing and Rehabilitation has established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate.

1. The Silvercrest Center for Nursing and Rehabilitation is authorized to discharge the Appellant in accordance with its July 24, 2019 discharge notice.

Dated: September 26, 2019
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge