



Department of Health

ANDREW M. CUOMO
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Commissioner

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

May 18, 2017

CERTIFIED MAIL/RETURN RECEIPT

Liana Rutenberg-Diaz, NHA
Fordham Nursing & Rehab
2678 Kingsbridge Terrace
Bronx, NY 10463

[REDACTED], Resident
c/o Fordham Nursing & Rehab
2678 Kingsbridge Terrace
Bronx, NY 10463

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: mw
Enclosure

COPY

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 : DECISION
 :
 FORDHAM NURSING AND REHABILITATION CENTER :
 :
 Respondent, :
 :
 to discharge her from a residential health :
 care facility :
 -----X

The Fordham Nursing and Rehabilitation Center ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED] [REDACTED] 2017, to [REDACTED] [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On [REDACTED], 2017, a hearing was held before WILLIAM J. LYNCH, ESQ., ADMINISTRATIVE LAW JUDGE.

The hearing was held in accordance with the Public Health Law of the State of New York; Part 415 in 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"); the New York State Administrative Procedure Act ("SAPA"); and 10 NYCRR Part 51.

Evidence was received and witnesses were examined. An audio recording of the proceeding was made. The hearing was held at the

Facility located at 2678 Kingsbridge Terrace, Bronx, New York. The following individuals were present for the hearing: [REDACTED], Resident; [REDACTED], Resident's [REDACTED] Dunstan Pulle, M.D.; Liana Rutenberg-Diaz, L.N.H.A; Jennifer Molina, L.M.S.W; Johanna Romano, L.R.O.T.; and Purnima Bathla, L.P.T.

STATEMENT OF THE CASE

The Facility made a determination to discharge the Resident effective [REDACTED] 2017. The stated reason for the discharge was that the Resident's health had improved sufficiently so that she no longer required the services provided by a skilled nursing facility. The proposed discharge location was the Riverdale Manor, 6355 Broadway, Bronx, New York. The Resident filed a timely request for an appeal of the discharge decision and has remained in the Facility pending this determination.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether the Facility has established a basis which permits the Resident's discharge from the Facility and whether the proposed discharge plan is appropriate. The Facility has the burden of proving its

case by substantial evidence (10 NYCRR § 415.3[h][2][iii], SAPA § 306[1]).

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 testimony or exhibits. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. The Resident is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] [REDACTED] 2015, for [REDACTED]-term rehabilitation. (Facility Ex. 2; Recording @ 7:15).

2. The Resident completed a course of physical and occupational therapy. She is now able to ambulate safely with a walker, and she is also able to independently perform all activities of daily living. (Facility Ex. 4, 5; Recording @ 12:15, 24:00, 26:30).

3. The Facility's interdisciplinary care team determined that the Resident no longer required skilled nursing services and could safely be discharged to an adult home. (Facility Ex. 3; Recording @ 12:00).

4. The Resident's medical diagnoses include [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], and pain. She has a [REDACTED] [REDACTED] and receives follow up care by a [REDACTED] in the community. The Resident's attending physician at the Facility determined that the Resident was medically stable for discharge, and that the Resident will be able to obtain the medical services which she requires on an outpatient basis. (Facility Ex. 3; Recording @ 14:00, 20:15).

5. On [REDACTED] 2017, the Facility issued a discharge notice to the Resident. (Facility Ex. 1).

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]). 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 established through testimony of four medical professionals and documents that the Resident no longer needs to reside in a skilled nursing facility.

The Resident claimed her [REDACTED] [REDACTED] and pain were conditions which warranted her remaining in a skilled nursing facility. The record establishes, however, that these are all conditions which can be treated on an outpatient basis.

The proposed discharge location is an adult home. The discharge plan includes arranging for transportation to the adult home, providing prescriptions for the Resident's medications, and providing any required durable medical equipment. The Resident acknowledged that she has no other housing options available to her and that she is not able to stay with a friend or a family member. She asked to be transferred to a different nursing home, but the record establishes that she no longer needs a skilled nursing facility placement, and that she can obtain any required follow-up medical care in the community. Therefore, the Facility has established a permissible basis for the Resident's discharge.

DECISION AND ORDER

1. The Facility is authorized to discharge the Resident in accordance with its discharge plan on or after [REDACTED] [REDACTED] [REDACTED] 2017.

2. This decision shall be effective upon service on the parties by facsimile transmission, personal service or by certified or registered mail.

3. 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: Albany, New York
May 17, 2017**



WILLIAM J. LYNCH
Administrative Law Judge