



**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 15, 2017

CERTIFIED MAIL/RETURN RECEIPT

Rebecca Bray, DSW
Focus Rehab & Nursing
1445 Kemble Street
Utica, New York 13501

[REDACTED]
c/o Focus Rehab & Nursing
1445 Kemble Street
Utica, New York 13501

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:
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

FOCUS REHABILITATION AND NURSING AT UTICA, :

Respondent, :

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

Focus Rehabilitation and Nursing at Utica ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED], 2017, to [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On September 13, 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 1445 Kemble Street, Utica, New York. The

following individuals were present for the hearing: [REDACTED]

[REDACTED] Resident; Mario Caracas, Ombudsman; Cynthia Ortiz, ACR Health Case Manager; Helen Norine, Administrator; Richard White, Rehabilitation; Theresa Appler, LPN, Unit Manager; Rebecca Bray, D.S.W.; Lori Morosco, RN, DON; Helene Hansen, P.A.

STATEMENT OF THE CASE

The Facility issued a determination proposing to discharge the Resident effective [REDACTED] 2017. The stated reason for the discharge was that the Resident's health had improved sufficiently so that he no longer required the services provided by a skilled nursing facility. The proposed discharge location was the [REDACTED], [REDACTED]. 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 male who was admitted to the Facility on [REDACTED], 2017, for [REDACTED] and [REDACTED] [REDACTED] following a hospitalization. (Facility Ex. 1; Recording @ 2:45).

2. The Resident completed a program of physical therapy, and he now ambulates independently or with a [REDACTED] walker. He can perform all activities of daily living. (Facility Ex. 2, 4; Recording @ 14:15; 16:00).

3. The only medical care that the Resident receives at the Facility is monitoring of his chronic health conditions and management of his medications. The Resident can receive this same

care as an outpatient and can manage his own medications. (Facility Ex. 4, 5; Recording @ 26:00).

4. The Facility's interdisciplinary care team determined that the Resident no longer required skilled nursing services and could safely be discharged. (Recording @ 27:30).

5. The Resident's attending physician determined that the Resident was medically stable and agreed with the discharge plan. (Facility Ex. 7; Recording @ 26:00).

6. The Resident currently has no source of income so he is unable rent an apartment or other type of housing. (Facility Ex. 1; Recording @ 6:30).

7. The [REDACTED] of [REDACTED] will provide the Resident with an assigned bed, meal service, and assistance with finding permanent housing. (Facility Ex. 6; Recording @ 7:30)

8. The [REDACTED] Health Agency of [REDACTED] has assigned a caseworker who will provide the Resident with assistance with obtaining follow-up medical care in the community and permanent housing. (Recording @ 37:45)

9. On [REDACTED], 2017, the Facility issued a discharge notice to the Resident which proposes discharge to the [REDACTED]. (Facility Ex. 3).

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 and documents that there is no reason for the Resident to remain in a skilled nursing facility and that the Resident's chronic medical conditions and medications can be managed on an outpatient basis. The Resident can independently perform all activities of daily living. The Facility explored placement alternatives, and the only available option was the [REDACTED].

The Resident testified regarding his chronic medical condition, but he offered no evidence of any issue which warranted skilled nursing home placement. Based upon the evidence produced at the hearing, I determined on the record that the Resident no longer needed to reside in a skilled nursing facility and that he could obtain any required follow-up medical care in the community on an outpatient basis.

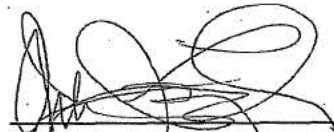
DECISION AND ORDER

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

2. This decision shall be effective upon service on the parties by 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
September 14, 2017



WILLIAM J. LYNCH
Administrative Law Judge