



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

October 11, 2017

CERTIFIED MAIL/RETURN RECEIPT

Claudia Da Costa, SW
Hempstead Park Nursing Home
800 Front Street
Hempstead, New York 11550

██████████
c/o Hempstead Park Nursing Home
800 Front Street
Hempstead, New York 11550

Barbara Phair, Esq.
Abrams & Fensterman, LLP
3 Dakota Drive
Suite 300
Lake Success, New York 11042

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: ISM
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

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In the Matter of an Appeal, pursuant to :
10 NYCRR § 415.3, by :

[REDACTED]

Appellant, :

from a determination by :

DECISION

HEMPSTEAD PARK NURSING HOME, :

Respondent, :

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

-----X
Hempstead Park Nursing Home ("Facility") issued a Notice of
Transfer/Discharge, dated [REDACTED] [REDACTED] 2017, to [REDACTED] [REDACTED]
("Resident"). The Resident appealed the Facility's proposed
discharge. On October 3, 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 800 Front Street, Hempstead, New York. The following individuals were present for the hearing: [REDACTED], Resident; Margaret Hromada, Ombudsman; Barbara Phair, Esq., Attorney for Respondent; Juliet Thomas, Director of Nursing; Claudia DaCosta, Social Worker; Anita Walter, Director of Rehabilitation; Rajesh Rohatgi, M.D., Attending Physician.

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 to the Nassau County Department of Social Services ("DSS"). 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 rehabilitation following an acute care hospitalization. His diagnoses included [REDACTED] [REDACTED]. (Facility 1; Recording @ 3:25).

2. The Resident completed a program of physical therapy, and he now ambulates independently with a [REDACTED]. He can perform all activities of daily living. (Facility Ex. 2, 3; Recording @ 6:50).

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; Recording @ 4:00).

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

5. The Resident's attending physician determined that the Resident was medically stable and agreed with the discharge plan. (Facility Ex. 1; Recording @ 3:50).

6. The Resident currently has no source of income so he is unable to rent an apartment or other type of housing. He does not require assisted living. He also does not have the option of residing with family or friends. (Recording @ 2:50).

7. On [REDACTED] 2017, the Facility issued a discharge notice to the Resident which proposes discharge to the [REDACTED] [REDACTED] DSS. (Facility Ex. 5).

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 can be managed on an outpatient basis. After completing a program of rehabilitation, the Resident can independently perform all activities of daily living. The Facility explored placement alternatives, and the only available option was the [REDACTED] DSS. The Facility's discharge plan includes submitting a referral to the [REDACTED] DSS prior to discharge as well as providing medications, follow-up instructions, and transportation.

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 [REDACTED] [REDACTED] [REDACTED] 2017.

2. 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
October 10, 2017



WILLIAM J LYNCH
Administrative Law Judge