



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

February 8, 2018

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Laconia Nursing Home
1050 East 230th Street
Bronx, New York 10466
10466

Carmen Lopez, Director of Social Services
Laconia Nursing Home
1050 East 230th Street
Bronx, New York

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 /CAC
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
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

LACONIA NURSING HOME,

Respondent,

to discharge him from a residential health care facility.

COPY

DECISION

Hearing Before:

Ann.H. Gayle
Administrative Law Judge

Held at:

Laconia Nursing Home
1050 East 230th Street
Bronx, New York 10466

Hearing Dates:

August 22, 2017 and November 21, 2017
The record closed on January 29, 2018

Parties:

Laconia Nursing Home
By: Carmen López, Director of Social Work



Pro Se

Pursuant to Public Health Law ("PHL") §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("10 NYCRR") §415.2(k), a residential health care facility or nursing home such as Laconia Nursing Home ("Respondent" or "Facility") is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(h). Respondent determined to discharge [REDACTED] ("Appellant" or "Resident") from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(a)(2) which provides, in pertinent part:

- (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.

Appellant appealed the discharge determination to the New York State Department of Health, and a hearing on that appeal was held. Pursuant to 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

A digital recording of the hearing was made and transferred to a compact disc ("CD"); the CD has become part of the record. Appellant appeared at the hearing and testified on his own behalf. The following Facility representatives testified for Respondent: Moshe Labi, MD—Medical Director, Tifus Manabat—Rehabilitation Supervisor, Anna Santos—Rehabilitation Supervisor, Maggie Manuel, RN—Nursing Supervisor, Maria Socorro Hermoso, RN—Nursing

Supervisor, and Carmen Lopez—Director of Social Work. Also present at the hearing were Reuben Barkhordar—Assistant Administrator and Nancy Gomez—Social Worker.

The following documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ and Facility Exhibits:

ALJ:

- I: Notice of Hearing with the Facility’s Discharge Notice attached
- II: Letter dated October 31, 2017

Facility:

- 1: BIMS score
- 2: Statement of Dr. Walter
- 3: Statement of Ms. Lopez
- 4: Medications and diagnoses
- 5: Statement of Dr. Labi
- 6: [REDACTED] 2017 nursing note
- 7: [REDACTED] 2017 nursing notes
- 8: [REDACTED] 2018 fax
- 9: [REDACTED] 2018 fax

Resident:

- A: Excerpts from Facility’s chart for Appellant

ISSUE

Has Laconia Nursing Home established that the transfer is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (“T”) of witnesses and exhibits (“Ex”) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

- 1. Respondent, Laconia Nursing Home, is a residential health care facility located in Bronx, New York. (Ex I)

maconia

2. Appellant, age [REDACTED] was admitted to the Facility from [REDACTED] Hospital more than [REDACTED] years ago on [REDACTED] 2002. Appellant is alert and oriented and independent in his ADLs (activities of daily living). Appellant's medical conditions can be addressed in the community, but Appellant is unable to manage his medications independently. (Ex 2; Ex 3; Ex 5; Ex 6; T Labi, Manabat, Santos, Manuel, Lopez, Hermoso, Appellant)

3. Appellant's medical conditions include [REDACTED]

[REDACTED] Appellant's medications with administration orders for these conditions include 1 drop of Artificial Tears in both eyes 3 times daily at 6 am, 2 pm and 10 pm; Benzoyl Peroxide face wash 2 times daily, [REDACTED] 250 mg [REDACTED] 1 tablet once a day [REDACTED] applied to affected area on [REDACTED] 3 times daily at 10:00 am, 6:00 pm, and 10:00 pm, and applied to [REDACTED] 2 times daily between 8:00 am and 3:59 pm and between 4:00 pm and 11:59 pm; [REDACTED] Oral Capsule 100 mg [REDACTED] 1 capsule by mouth twice daily or 2 capsules by mouth at bedtime; Geri-Lanta Oral Suspension 200-200-20 mg/5 ml (Mylanta) 15 ml by mouth every 8 hours as needed; Melatonin Oral Capsule 5 mg (Melatonin) 1 capsule(s) by mouth at bedtime; Senna Oral Tablet 8.6 mg (Sennosides) 2 tablets by mouth at bedtime; [REDACTED] Oral Tablet 10 mg [REDACTED] 1 tablet by mouth at bedtime [REDACTED] Oral Tablet 150 mg [REDACTED] .5 (1/2) tablet(s) (75 mg) by mouth at bedtime; Vaseline Petroleum Jelly applied topically to [REDACTED] twice daily at 10:00 am and 6:00 pm; and Vitamin D3 Oral Capsule, 50,000 unit 1 capsule by mouth every 1 month at 10:00 am on day 15 of the month. (Ex 4)

4. By notice date [REDACTED] 2017, Respondent advised Appellant that it had determined to discharge him on the grounds that his health has improved sufficiently so that he no longer needs the services provided by the Facility. (Ex D)
5. Respondent's discharge plan is to transfer Appellant to the [REDACTED] Shelter ("Shelter") located at [REDACTED] (Ex D)
6. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's medical director, that discharge to the community, including the Shelter, is appropriate for Appellant. (Ex 2; T Labi, Manabat, Santos, Manuel, Lopez, Hermoso)
7. Appellant has remained at Laconia Nursing Home pending the outcome of this proceeding.

DISCUSSION

The evidence presented by Respondent demonstrates that Appellant is independent with his ADLs, his condition is stable, and his medical conditions can be treated in the community. Respondent has not, however, demonstrated that Appellant is capable of managing his numerous medications, with their different administration times and instructions, independently in the community.

Appellant was admitted to the Facility more than [REDACTED] years ago. Appellant's medical conditions and medications have been managed for him by Respondent for the past [REDACTED] years. Appellant testified credibly that, especially in light of his medication management having been out of his control for so many years, he cannot now manage the numerous medications with so many different administration instructions: bed time, 3 or 2 times a day at specific times or within specific timeframes, with meals, not with meals, etc. At the August 22, 2017 hearing, the

ALJ directed the Parties to work together to educate Appellant to become self-sufficient with his medication management. Several conference calls were held for the Parties to report their progress. At each conference call, Respondent reported that Appellant was not cooperative with the education and training but that it was still the Facility's belief that Appellant could manage his medications independently in the community, and the Parties and ALJ discussed plans for additional types of training that could be attempted going forward. Appellant repeatedly reported that he was trying but it was too much to learn. Respondent's many efforts at medication education and training, including having a nurse hand Appellant a bottle of a particular medication that was to be given at a particular time and telling Appellant to open the bottle, remove and take a pill, proved unsuccessful; Appellant could not demonstrate that in the community he would know that it was time to take that particular pill from that particular bottle and repeat it for all his medications. Using marked boxes to be filled at the beginning of the week with all of Appellant's medications for the week was also not something Appellant seemed capable of mastering at that time.

At Respondent's request, another hearing date was scheduled for November 21, 2017. At that hearing date, Respondent once again failed to prove that Appellant could safely manage his medications independently in the community. The Parties were instructed to continue to explore discharge locations in addition to the Shelter, and to continue to work together on medication management education. The Parties represented that they would contact the ALJ when progress or other events warranted another conference call. Respondent faxed two letters¹ to the ALJ on January 11, 2018. In the first letter, Respondent reported that Appellant was instructed in self-administration of medications, and that Appellant is capable of doing this but he "prefers to be noncompliant [and] refuses to follow instructions or plan of care..." The second letter reported

¹ These letters have been marked Facility Exhibit 8 and made part of the record.

that Appellant was referred to Open Doors Center for Independence of the Disabled (“Open Doors”) and that he was accepted into that program. (Ex 8)

Another conference call was held on January 17, 2018. Ms. Lopez reported that Open Doors will work with Appellant toward locating housing in the community and provide other services to meet his needs, but no timeframe could be given for when housing might be available; it is expected to be a lengthy process. Appellant reiterated that he is still not able to manage his medications independently, and he expressed his interest in working with Open Doors to secure community housing with appropriate support and services. Ms. Lopez was directed to provide the ALJ with written documentation of whether Respondent was withdrawing or pursuing its ████████ 2017 Notice of Transfer/Discharge which proposes discharging Appellant to the ████████ Shelter.

Respondent faxed a letter² to the ALJ on January 29, 2018, stating that “all concerned departments (Nursing, Rehabilitation, and Social Services)” agree that Appellant should be discharged to the community and that his “appropriate placement is to be determined by the court.” Appellant wrote on that letter, “I do not agree with the Facility...” (Ex 9)

CONCLUSION

Respondent has proven that Appellant’s general health has improved sufficiently and that his current conditions are conditions that, generally, can be treated in the community, but Respondent has not proven that Appellant no longer needs the services provided by the Facility; Appellant needs the medication management services provided by the Facility. Additionally, Respondent, in not proving that the Shelter could provide the supervision or support Appellant requires, failed to prove that the Shelter is an appropriate discharge location for Appellant.

² This letter has been marked Facility Exhibit 9 and made part of the record.

Laconia

DECISION

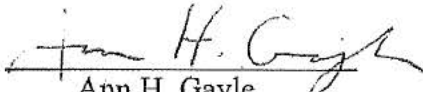
I find that the transfer is not necessary at this time, and the discharge plan is not appropriate.

The appeal by Appellan [REDACTED] is therefore GRANTED.

Respondent, Laconia Nursing Home, is not authorized to discharge Appellan [REDACTED] in accordance with [REDACTED] 2017 discharge notice.

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: New York, New York
February 8, 2018


Ann H. Gayle
Administrative Law Judge

TO: [REDACTED]
c/o Laconia Nursing Home
1050 East 230th Street
Bronx, New York 10466

Carmen Lopez, Director of Social Services
Laconia Nursing Home
1050 East 230th Street
Bronx, New York 10466