



**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 5, 2018

CERTIFIED MAIL/RETURN RECEIPT

Justina Mante
The Grove at Valhalla
61 Grasslands Road
Valhalla, New York 10595

[REDACTED]
c/o The Grove at Valhalla
61 Grasslands Road
Valhalla, New York 10595

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: nm
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 GROVE AT VALHALLA REHABILITATION AND
NURSING CENTER

Respondent,

to discharge her from a residential health
facility

COPY

DECISION

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A Notice of Transfer/Discharge, dated [REDACTED] 2017, was issued to [REDACTED] (Appellant), by The Grove at Valhalla Rehabilitation and Nursing Center. The Appellant appealed the Facility's proposed discharge. On January 31, 2018, a hearing on the appeal was held before Dawn MacKillop-Soller, Administrative Law Judge, at The Grove at Valhalla Rehabilitation and Nursing Center (Respondent/Facility), located at 61 Grasslands Road, Valhalla, New York. The Appellant represented herself at the hearing. The Facility was represented by Justina Mante, Director of Social Work.

Evidence was received and witnesses were sworn or affirmed and examined. An audio recording of the proceeding was made. Testimony was received from Ms. Mante, Samuel Mark, M.D., Gloria Andrade, Nurse Practitioner, Jessica Rivera, Director of Rehabilitation,

Sherley Chalmers, Registered Nurse, and Christine Martinez, social worker. Aaron Levy, Administrator, was also present for the hearing.

The following documents were admitted into evidence:

ALJ Exhibit I - Discharge/Transfer Notice

Facility Exhibit 1 - Physician progress notes

Facility Exhibit 2 - Cognitive pattern notes

Facility Exhibit 3 - Face sheet and admission record

Facility Exhibit 4 - Social worker progress notes

Facility Exhibit 5 - Physical and occupational therapy notes

STATEMENT OF THE CASE

The Facility made a determination to discharge the Appellant on the basis that the Appellant's health has improved sufficiently so that she no longer needs the services provided by the Facility.

The discharge plan proposed that effective [REDACTED] 2017, the Appellant would be transferred to [REDACTED] located at [REDACTED]

[REDACTED] The Appellant opposed the discharge plan and appealed the discharge decision. A telephone conference call was scheduled with the parties on January 3, 2018, in which the Appellant did not appear, claiming she required time to retain a representative to participate and to prepare for the hearing. Based on this, the hearing was scheduled for January 31, 2018.

STATEMENT OF ISSUES

Has the Facility proven by substantial evidence that the Appellant's health has improved sufficiently so that she no longer needs skilled nursing care services and that its discharge plan is appropriate?

FINDINGS OF FACT

The citations in brackets refer to recording time frames where testimony was taken at the hearing or exhibits [Ex.] and represent evidence found persuasive in arriving at a particular finding. The following findings of fact were made after a review of the entire record in this matter:

1. The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED], 2017, for [REDACTED] term rehabilitative therapies to her [REDACTED] extremities following her hospitalization. Her diagnoses included [REDACTED]
[REDACTED]. Her medical history includes [REDACTED]
[REDACTED] [Ex. 1; 42:06-11, 42:36, 42:50].

2. The Appellant received occupational and physical therapies, which she completed on [REDACTED] 2018. The Appellant prefers to use a wheelchair for safety purposes, but is without medical restrictions for [REDACTED]. She freely ambulates inside and outside the Facility with a cane, walker or wheelchair. [Ex. 5;

Recording @ 40:23, 42:23, 43:44-52, 43:16-18, 45:11, 45:48, 1:14-56-1:15:08].

3. The Appellant does not have any cognitive limitations and is capable of managing her own medications, which include

[REDACTED] [Recording @ 41:15, 41:35, 43:16-18, 48:31].

4. The Facility determined that the Appellant has met her treatment goals and is independent with her activities of daily living. [Ex. 5; Recording @ 1:3:12-23, 1:5:12-17, 1:14:56-1:15:08].

5. The Facility's proposed discharge plan is to transfer the Appellant to [REDACTED] located at [REDACTED]

[REDACTED] [Ex. I].

6. The Appellant does not require skilled nursing care from medical staff, yet is desirous of staying at the Facility and opposes the discharge plan. She testified that the transfer plan is not appropriate due to her [REDACTED] difficulties, complaints of [REDACTED] levels. [Ex. 4; Recording @ 45:42, 49:17, 49:41, 1:07-18-22, 1:16:56].

7. The Appellant's care team at the Facility and the Facility's physician, Samuel Mark, M.D., conclude that the Respondent's discharge plan is safe and appropriate. The physician testified to his opinion based on extensive observations of the Appellant, a review of the medical records and discussions with Facility staff. [Ex. 1; Recording @ 49:17, 49:41, 54:21-36].

APPLICABLE LAW

1. The hearing was held in accordance with Article 28 of the Public Health Law of the State of New York; Part 415 in Volume 10 of the Official Compilation of Codes, Rules and Regulations (NYCRR); Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and 10 NYCRR Parts 51 and 415. The Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate. 10 NYCRR 415.3(h)(2)(iii).

2. Pursuant to 10 NYCRR 415.3(h)(2), a resident has the right to challenge a nursing home's transfer or discharge plan.

3. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(h). It 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;

ANALYSIS AND CONCLUSIONS

The Facility proved by substantial evidence that the Appellant's health has improved sufficiently so she no longer needs skilled nursing care services and that its discharge plan to transfer the Appellant to The Sharing Community, is appropriate. The Appellant was admitted to the Facility for [REDACTED] term rehabilitation following her admission to [REDACTED] from [REDACTED] 2017, to [REDACTED] 2017, for [REDACTED] extremity [REDACTED]. The Facility's evidence established that in addition to managing her own medications and her independence in her activities of daily living, the Appellant has reached her maximum level of improvement and independence and achieved her rehabilitation goals. The Facility's physician and the interdisciplinary care team agree she no longer requires skilled nursing care. [Ex. I; Recording @ 26:39, 49:17, 49:41, 54:21, 1:3:53, 1:14:11].

The Appellant opposes the discharge and argues that she requires the Facility's skilled nursing services because of her [REDACTED] and [REDACTED] difficulties. The evidence, however, confirmed the Appellant was medically cleared by the Facility's physician, Samuel Mark, M.D., for [REDACTED] and is without any ambulation restrictions. Dr. Mark also testified to the Appellant's independence with self-care, including managing her medications and regularly leaving the facility to shop. Sherley Chalmers, R.N., described the Appellant as requiring no treatment and independent

with activities of daily living, including bathing, toileting and bed transfers. Jessica Rivera, Director of Rehabilitation, testified that although the Appellant chooses to use a wheelchair, she is capable of walking, even in high heels, with minimal use of a walker. [Recording @ 55:23-26, 57:19, 1:3:12-1:5:17, 1:3:46, 1:16:56].

While the Appellant claims that she may require a future surgery to her [REDACTED] extremities, skilled nursing home care does not hinge on a procedure that might occur sometime in the future. Likewise, skilled nursing care is not reserved for unsubstantiated complaints of [REDACTED]. Also, the Appellant's concerns of [REDACTED] of medications and [REDACTED] of other residents at the [REDACTED] fail to justify such care. In considering the Appellant's personal circumstances, which do not include a home or caretaker, the Appellant's care team agree that her needs, which are uncomplicated and without significant mobility challenges, can be satisfied at [REDACTED] [Recording @ 10:47, 15:16, 17:53, 35:19, 40:37-44, 1:4:37, 1:17:05, 1:21-25 - 1:22-09].

Based on a review of all of the evidence presented, I find the Facility's determination to discharge the Appellant appropriate because the Facility has proven by substantial evidence that the Appellant's condition has improved sufficiently so that she no longer needs skilled nursing services. I also find the discharge plan to transfer her to [REDACTED] appropriate. The Appellant may consent to her discharge to an alternate location if

she is a suitable candidate and placement is available; however, the Facility is authorized to transfer the Appellant to the [REDACTED] in accordance with its discharge plan on or after [REDACTED] 2018.

DECISION AND ORDER

1. The Facility is authorized to discharge the Appellant to [REDACTED] on or after Wednesday, [REDACTED] 2018;
2. This decision shall be effective upon service on the parties by facsimile transmission, personal service or by certified or registered mail; and
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.

**Dated: Albany, New York
February 5, 2018**



**DAWN MacKILLOP-SOLLER
Administrative Law Judge**

To: [REDACTED]
c/o The Grove at Valhalla Rehabilitation and Nursing Center
61 Grasslands Road
Valhalla, New York 10595

Justina Mante, Director of Social Work
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