



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

July 19, 2018

CERTIFIED MAIL/RETURN RECEIPT

Linda Mannoia, Director of Nursing
Westhampton Care Center
78 Old Country Road
Westhampton, New York 11977

[REDACTED] Appellant
C/o Westhampton Care Center
78 Old Country Road
Westhampton, New York 11977

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

[REDACTED]

Appellant,

from a determination by

WESTHAMPTON CARE CENTER

Respondent,

to discharge him from a residential health
care facility.

COPY

DECISION

Hearing Before:

Matthew C. Hall
Administrative Law Judge

Held at:

Westhampton Care Center
78 Old Country Road
Westhampton, New York 11977

Hearing Date:

June 13, 2018

Parties:

Westhampton Care Center
By: Linda Mannnoia, D.O.N.

[REDACTED]

Pro Se

JURISDICTION

By notice dated [REDACTED] 2018, Westhampton Care Center (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to Title 10 of the New York Codes Rules, and Regulations (NYCRR) § 415.3(h).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and attached Facility Discharge Notice

Facility Exhibits: 1 - Facility Discharge Notice [REDACTED] (18)
2 - Employee Statement [REDACTED] (18)
3 - Progress Notes [REDACTED] (18)

Appellant was given the opportunity, but did not offer any documents into evidence.

Facility Witnesses: Ann DiGesu - Licensed Practical Nurse
Stacey Garcia - R.N.
Linda Mannoai - R.N., Director of Nursing

Appellant's Witnesses: Appellant Testified on her own behalf
[REDACTED] - Appellant's [REDACTED]
[REDACTED] Appellant's [REDACTED]

ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its 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 cited evidence.

1. The Appellant, a [REDACTED]-year-old woman, was admitted to the Facility on [REDACTED] 2018, with diagnoses of [REDACTED] [REDACTED] (Ex. 3).

2. By notice dated [REDACTED] 2018, the Facility determined to discharge the Appellant on [REDACTED] 2018 as "an immediate transfer/discharge was required by the resident's urgent medical needs." (Ex. 1).

3. The Facility determined to discharge the Appellant to the [REDACTED] Hospital (hospital) Emergency Room located at [REDACTED] (Ex. 1).

4. On [REDACTED] 2018, an incident occurred at the Facility involving the Appellant and her roommate. (Ex. 2, T. Mannoai, Garcia, DiGesu).

5. On that day, Certified Nursing Assistant (C.N.A.), [REDACTED] went to the Appellant's room to provide care for her. When she got to the room, she noticed that the Appellant's roommate had [REDACTED] (Ex. 2).

6. The Appellant was seated in a wheelchair in the same room, but not near her roommate. (Ex. 2).

7. Assuming the Appellant had attempted to [REDACTED] her roommate, C.N.A. [REDACTED] reported what she saw to her immediate supervisors. She also provided a written statement. (Ex. 2).

8. The Appellant was sent to the hospital for a [REDACTED] Evaluation. After her evaluation, the [REDACTED] gave the okay" for the Appellant to return to the Facility. [REDACTED]

9. While the Appellant was at the hospital, however, the Facility had determined not to allow the Appellant to return as the "safety/health of the individuals in the Facility would be endangered" by her return. (Ex. 1).

10. Without the assistance of the Facility, the Appellant's [REDACTED] were then forced to find another skilled nursing

facility for the Appellant to reside. Eventually they found her a room at [REDACTED] Nursing Center in [REDACTED] [REDACTED] a [REDACTED] trip for the Appellant's [REDACTED] when they visit her. [REDACTED]

11. On behalf of their [REDACTED] the Appellant's [REDACTED] appealed her discharge from the Facility and would like her to return.

12. The Appellant remains at [REDACTED] Nursing Center pending the outcome of this appeal.

APPLICABLE LAW

A residential health care facility (also referred to in the Department of Health Rules and Regulations as a nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. Public Health Law §§ 2801(2)(3); 10 NYCRR § 415.2(k).

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)(i)(a)(1), which states:

The transfer or discharge is necessary for the resident's welfare and the resident's needs

cannot be met after reasonable attempts at accommodation in the facility.

Under the hearing procedures at 10 NYCRR §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under the New York State Administrative Procedures Act § 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 (3rd Dept. 1984), appeal dismissed 63 N.Y.2d 649.

DISCUSSION

Reason for Discharge

Regarding whether the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the Facility:

The Appellant was admitted to the Facility on [REDACTED], 2018, with diagnoses of [REDACTED]

[REDACTED] (Ex. 3).

It should be noted initially, that while the Facility provided that the resident's "needs could not be met" on the discharge notice, they did not present any evidence to prove that at the hearing. Instead, their entire case revolved around their allegation that the Appellant was a danger to those around her, an allegation which was not addressed on the discharge notice. As described above, on [REDACTED] 2018, an incident occurred at the Facility involving the Appellant and her roommate. The Facility alleges that the Appellant attempted to [REDACTED] her roommate [REDACTED]

[REDACTED] C.N.A. [REDACTED] was the only person at the Facility that day who went into the Appellant's room. On the day of this hearing, however, C.N.A. [REDACTED] was not available to testify. Accordingly, the remaining evidence available to the Facility was the written statement provided by C.N.A. [REDACTED] and the testimony of other nursing professionals who were provided with a hearsay account of the incident by C.N.A. [REDACTED]. In her written statement, C.N.A. [REDACTED] wrote that "[the Appellant] was in her wheelchair," and that she "saw [the Appellant's roommate] had

[REDACTED] and [the Appellant] was looking at her." She also wrote that when she asked [the Appellant] if she did that, she said [REDACTED] (Ex. 2). Nurse [REDACTED]

[REDACTED] and Director of Nursing, Linda Mannoai, all provided

sworn testimony. Their testimony, however, was simply a recitation of what was told to them by C.N.A. [REDACTED]

The entirety of the Facility's evidence was in the form of hearsay. Hearsay is admissible in administrative proceedings and an administrative determination may be based solely upon hearsay evidence under appropriate circumstances Gray v. Adduci, 73 N.Y.2d 741 (1988), 300 Gramatan Avenue Associates v. State Division of Human Rights, 45 N.Y.2d 176 (1978), Eagle v. Patterson, 57 N.Y.2d 831 (1982), People ex rel Vega v. Smith, 66 N.Y.2d 130 (1985). A crucial concern with respect to hearsay evidence is the inability to cross-examine the person who originally made the statement in order to evaluate his or her credibility. Specifically, in this matter, there was no opportunity to cross-examine C.N.A. [REDACTED] or her written statement. Evidence regarding her account, then, must be carefully scrutinized and weight attributed to it depending upon its degree of apparent reliability. Factors to be considered in evaluating the reliability of hearsay include the circumstances under which the statements were initially made, information bearing upon the credibility of the person who made the statement and his or her motive to fabricate, and the consistency and degree of inherent believability of the statements.

Contrary to the Facility's evidence, the Appellant provided sworn testimony and her testimony was deemed credible. Under oath, the Appellant denied that she [REDACTED] on her roommate's

[REDACTED] When asked if she said that she wanted to [REDACTED]

[REDACTED] the Appellant responded, [REDACTED]

[REDACTED] (T. Appellant). The Appellant's sworn testimony is accepted over the Facility's unclear, and uncorroborated hearsay.

Accordingly, the Facility did not prove by a preponderance of the evidence that its determination to discharge the Appellant was correct.

Discharge Location

The Facility determined to discharge the Appellant to [REDACTED] [REDACTED] Hospital. On the evening of the alleged incident, the Appellant was taken to the hospital and was given a discharge notice from the Facility after she was there. The Facility refused to allow the Appellant to return. The Appellant's [REDACTED] were then put in the position of having to find the Appellant a discharge location after the Appellant had been labeled a [REDACTED] aggressor by the Facility. Fortunately, they were able to find her a bed at

[REDACTED] Nursing Center in [REDACTED]

[REDACTED] -mile trip for the Appellant's [REDACTED] when they visit her.

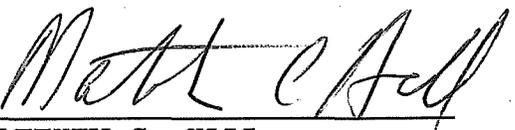
Discharge to a hospital is not an appropriate discharge plan. The Facility's determination fails to comport with regulatory requirements and is not sustained.

DECISION AND ORDER

Westhampton Care Center has not established that its determination to discharge the Appellant was necessary, and that the discharge plan is appropriate.

1. Westhampton Care Center is directed to re-admit the Appellant to the first available semi-private bed prior to admitting any other person to the Facility, pursuant to 10 NYCRR § 415.3(h)(2)(i)(d).

DATED: Albany, New York
July 19, 2018


MATTHEW C. HALL
Administrative Law Judge