



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

August 7, 2018

CERTIFIED MAIL/RETURN RECEIPT

Michelle Mercado, SW
Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591

[REDACTED]
C/o Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591

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: 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

TARRYTOWN HALL CARE CENTER

Respondent,

to discharge her from a residential health
care facility.

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DECISION

The Tarrytown Hall Care Center ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED] 2018, to [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On July 26, 2018, 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 20 Wood Court, Tarrytown, New York. The

following individuals were present for the hearing: [REDACTED]

Resident [REDACTED] friend of the Resident; Carolee Lee, Director of Social Work; Michelle Mercado, Social Worker; and Neil Eisikowitz, Administrator.

STATEMENT OF THE CASE

The Facility issued a determination proposing to discharge the Resident effective [REDACTED], 2018. The stated reason for the discharge was that the Resident's health had improved sufficiently so that she no longer required the services provided by a skilled nursing facility. The proposed discharge location was to the [REDACTED]

[REDACTED] DSS at [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 female who was admitted to the Facility on [REDACTED] 2018 for [REDACTED] term rehabilitation. (Facility Ex. 4; Recording @ 6:00).

2. The Resident is now able to ambulate independently with a cane and perform all activities of daily living. She has been taught to treat a [REDACTED] wound, and she currently provides her own care. (Facility Ex. 2; Recording @ 2:45).

3. The Facility's interdisciplinary care team determined that the Resident no longer required skilled nursing services and could safely be discharged. (Facility Ex. 2; Recording @ 2:15).

4. The Resident's attending physician determined that the Resident was medically stable and agreed with the discharge plan. (Facility Ex. 3).

5. On [REDACTED] 2018, the Facility issued a discharge notice to the Resident which proposes discharge to the [REDACTED] [REDACTED] DSS. (Facility Ex. 1).

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 offered into evidence a Discharge Plan which contains input by the members of the Resident's interdisciplinary care team. The Facility established through this document, a letter from the Resident's attending physician and the testimony of its witnesses that there is no reason for the Resident to remain in a skilled nursing facility. After completing a program of rehabilitation, the Resident can independently perform all activities of daily

living, and she can obtain any required medical care while living in the community.

The Resident explained that she had previously worked and lived independently for many years, but that she has been unemployed for the last five years and has resided in either a hospital, a nursing home, the home of a friend, or a homeless shelter. She stated that she worked in food service and would be unable to return to that type of employment. She stated that her prior experience in a shelter led to a decline in her health which caused her most recent hospitalization so she wants to be discharged to an Assisted Living Facility.

Ms. Mercado, the Facility's social worker, testified that the Resident is not eligible for residence in an Assisted Living Facility because she has no source of income. Ms. Mercado stated that she would assist the Resident in submitting an application to the Social Security Administration to see if she qualified as a disabled person, but that the Facility had no control over when or whether the Resident's application would be approved. Ms. Mercado indicated that the Facility would provide the Resident with medications, transportation to DSS, and assistance with arranging outpatient medical care at the time of discharge.

Based upon the evidence produced at the hearing, I find that the Resident no longer needs to reside in a skilled nursing facility and that she can obtain any required follow-up medical care on an outpatient basis while living in the community. The Resident would prefer discharge to an Assisted Living Facility, but that the option is currently not available due to her lack of income.

DECISION AND ORDER

1. The Facility is authorized to discharge the Resident in accordance with its discharge plan on or after [REDACTED] 2018.

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
August 7, 2018



WILLIAM J. LYNCH
Administrative Law Judge