



Department of Health

ANDREW M. CUOMO
Governor

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

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

December 6, 2018

CERTIFIED MAIL/RETURN RECEIPT

Yvonne Torres, DSW
New Gouverneur Nursing Facility
227 Madison Street
New York, New York 10002

[REDACTED]
c/o New Gouverneur Nursing Facility
227 Madison Street
New York, New York 10002

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: cmg
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

-----X
 In the Matter of an Appeal, pursuant to :
 10 NYCRR § 415.3, by :
 [REDACTED] :
 :
 Appellant, :
 :
 from a determination by :
 :
 NEW GOUVERNEUR NURSING FACILITY, :
 :
 Respondent, :
 :
 to discharge him from a residential health :
 care facility. :
 -----X

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DECISION

New Gouverneur Nursing Facility ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED] 2018, to [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On November 28, 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 227 Madison Avenue, New York, New York. The

following individuals were present for the hearing [REDACTED]

[REDACTED] Resident; [REDACTED] Resident's [REDACTED]

[REDACTED] Resident's [REDACTED] Resident's [REDACTED]

Susan Sales, Administrator; Alexander Kolessa, M.D.; Jenny Li, Social Worker; Sabrina Riboul, R.N., Case Manager; Patricia Reseau, R.N.; Danny Wong, Director of Rehabilitation; Maria Abalos, Assistant Rehabilitation Director; and Rusana Borochoy, Dietician.

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 he no longer required the services provided by a skilled nursing facility. The proposed discharge location was the Resident's home at [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 male who was admitted to the Facility on [REDACTED] 2018, for rehabilitation following a [REDACTED] (Facility 2; Recording @ 3:15).

2. The Resident received physical and occupational therapy until [REDACTED], 2018, when the Facility's rehabilitation staff determined that the Resident had achieved his maximum rehabilitation potential. (Facility 4; Recording @ 4:30).

3. The Facility's interdisciplinary care team determined that the Resident no longer required skilled nursing services and could safely be discharged to his home. (Facility Ex. 4; Recording @ 12:45).

4. The Resident's physician determined that the Resident was medically stable and agreed with the discharge plan. (Facility Ex. 3; Recording @ 9:00).

5. The Facility will arrange for a Visiting Nurses Services assessment, for prescriptions to be sent to a pharmacy of the Resident's choice, for out-patient rehabilitation services, and for a follow appointment with the Resident's physician in the community. (Recording @ 2:45).

6. On [REDACTED] 2018, the Facility issued a discharge notice to the Resident which proposes discharge to his home where he resides with his [REDACTED] (Facility Ex. 1; Recording @ 14:30).

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 of its medical professionals and documents that there is no reason for the Resident to remain in a skilled nursing facility. The Resident's medical conditions can be managed on an outpatient basis. After completing a program of rehabilitation, the Resident has reached his maximum rehabilitation potential, and the Facility has developed a discharge plan which is expected to allow the Resident to make a successful transition back to the community.

The Resident and his family members stated that the expense of using an ambulance service for transportation and the Resident's difficulty with the use of steps to his home are reasons why he should now remain in the Facility. However, the Resident's goal is to return to his home, and the testimony of the medical professionals at the Facility established that extending the Resident's stay at the Facility would only delay these concerns because the Resident has achieved his maximum rehabilitation potential.

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 he can obtain any required follow-up medical care on an outpatient basis while living in the community.

DECISION AND ORDER

1. The Facility is authorized to discharge the Resident in accordance with its discharge plan.

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
December 5, 2018



WILLIAM J. LYNCH
Administrative Law Judge