



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

January 4, 2019

CERTIFIED MAIL/RETURN RECEIPT

Shragi Weisz, NHA
Martine Center for Rehabilitation & Nursing
12 Tibbits Avenue
White Plains, New York 10606

[REDACTED]
c/o Martine Center for Rehabilitation
& Nursing
12 Tibbits Avenue
White Plains, New York 10606

[REDACTED]

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

ORIGINAL

[REDACTED]

DECISION

Appellant,

from a determination by

MARTINE CENTER FOR
REHABILITATION AND NURSING

to discharge him from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Martine Center for Rehabilitation and Nursing
12 Tibbits Avenue
White Plains, New York 10606

Date: December 19, 2018

Parties: [REDACTED]
Assisted by: Michael Kaufman, Ombudsman
Wayland E. Horsford, Power of Attorney
Rosita Howard, Friend

Martine Center for Rehabilitation and Nursing
By: Lori Gest, Director of Social Services

JURISDICTION

By notice dated [REDACTED] 2018, Martine Center for Rehabilitation and Nursing (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), 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 10 New York Codes Rules, and Regulations (NYCRR) 415.3(h).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. An audio recording of the proceeding was made.

HEARING RECORD

- ALJ Exhibits: I – Letter with Notice of Hearing and Transfer/Discharge Notice ([REDACTED]/18)
- Facility Exhibits: 1 – Progress Notes [REDACTED]/18 – [REDACTED]/18)
2 – PT Discharge Summary [REDACTED]/18)
3 – OT Discharge Summary [REDACTED]/18)
4 – Progress Note [REDACTED]/18)
- Appellant Exhibits: A – [REDACTED] and [REDACTED] Progress Notes
B – [REDACTED] Progress Notes
- Facility Witnesses: Lori Gest, Director of Social Services
Nora Eusebio, Director of Nursing
- Appellant Witnesses: Appellant testified on his own behalf
[REDACTED], Friend

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2018, for short-term rehabilitation. (Facility Ex. 1; Resident Ex. A; Testimony [T.] Gest.)
2. The Appellant received physical therapy (PT) and occupational therapy (OT) services from the Facility and was discharged from both in [REDACTED] 2018. (Facility Exs. 2-3.)
3. The Appellant also received care from nursing, medical, [REDACTED] and [REDACTED] and [REDACTED] professionals while at the Facility. (Facility Exs. 1, 4; Resident Exs. A, B; T. Gest, Eusebio.)
4. On [REDACTED] 2018, the Facility issued a Notice of Transfer/Discharge to the Appellant which proposed discharge to "[REDACTED] for Shelter Placement" in [REDACTED]. (ALJ Ex. I.)
5. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant's health has improved sufficiently and the Appellant no longer requires the services of the facility. (ALJ Ex. I.)
6. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.
7. The Appellant has remained at the Facility during the pendency of the appeal.

ISSUES

Has the Facility established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

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. (PHL § 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 Appellant'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.

Under the hearing procedures at 10 NYCRR 415.3(h)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate. Under SAPA § 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. It is less than a preponderance of evidence but more than mere surmise, conjecture or speculation, and it constitutes a rational basis for a decision. (Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3d Dept. 1984], appeal dismissed 63 N.Y.2d 649.)

DISCUSSION

Reason for Discharge

The Facility has determined that the Appellant's health has improved sufficiently and the Appellant no longer requires the services of a skilled nursing facility. (ALJ Ex. I.)

The Appellant was admitted to the Facility on [REDACTED] 2018, for short-term rehabilitation. (T. Gest.) He has received OT and PT from the Facility and was discharged from both therapies in [REDACTED] 2018. (Facility Exs. 2-3.) The Director of Social Services, Lori Gest, testified that the Appellant is alert and oriented to person, place and thing, that he is independent with his activities of daily living (ADLs), and that he understands what medications he takes and how to take them. (T. Gest.) A Facility medical progress note reflects that the Appellant "knows his medications," and nursing progress notes reflect that the Appellant has been "educated on medication administration" and verbalized and demonstrated understanding proper administration of his medications. (Facility Ex. 1.) The Director of Nursing, Nora Eusebio, testified that the Appellant was not receiving, nor did he require, any skilled nursing. (T. Eusebio.). She elaborated that the Appellant does not need rehabilitation, does not receive [REDACTED] medications, and has no dressings. (T. Eusebio.) She testified that the Appellant has [REDACTED] and [REDACTED] [REDACTED] both are which are stable, and that the Appellant can ambulate independently despite his preference to use a wheelchair. (T. Eusebio.) Regarding Appellant's mental state, Ms. Gest testified that he is "on point" and Ms. Eusebio testified that he is [REDACTED] "very stable." (T. Gest, Eusebio). A progress note by the Facility psychiatrist subsequent to an assessment on [REDACTED] 2018, indicates that the Appellant is "[REDACTED] stable." (Facility Ex. 1; Resident Ex. A.) The Facility medical doctor has determined that the Appellant is "clinically stable" and is appropriate for discharge to a community shelter. (Facility Ex. 1.)

The Appellant argues that he still requires a skilled nursing facility because he is not medically ready for discharge. (T. Soliman.) He testified that his [REDACTED] are inflamed and that he has pain in his [REDACTED]. (T. Soliman.) Other than the Appellant's general testimony regarding pain and inflammation, he offered no evidence of medical concerns indicating that he is inappropriate for discharge. (Resident Ex. B; T. Soliman.) The Appellant also testified that he

cannot remember the types of medications that he takes or whether he took them. (T. Soliman.) While it is impossible to know exactly what the Appellant can and cannot remember, the testimony by the Director of Social Work combined with the progress note from the Facility medical doctor on [REDACTED] 2018, and the progress notes from the nursing unit on [REDACTED], 2018, overwhelmingly contradict the Appellant's assertion that he cannot manage his medications. (Facility Ex. 1; T. Gest.)

The evidence supports that Appellant's health has improved sufficiently such that he no longer needs the services of a skilled nursing facility.

Discharge Location

The Facility has proposed discharging the Appellant to "the [REDACTED] for Shelter Placement" in [REDACTED]. (ALJ Ex. I.) As stated above, a Facility medical doctor noted on [REDACTED] 2018, that the Appellant was clinically stable and appropriate for discharge to a community shelter. (Facility Ex. 1.) As also stated above, the Director of Nursing testified that the Appellant does not receive or require any skilled nursing. (T. Eusebio.)

The Director of Social Work testified that the Facility considered alternative placements to a homeless shelter but that the Appellant is not a candidate for Adult Homes or Assisted Living Facilities because of his age and an incident involving [REDACTED] a couple months prior. (T. Gest.) She testified that most Adult Homes and Assisted Living Facilities require that residents be at least [REDACTED] years of age and [REDACTED] for a year and a half to two years. (T. Gest.)

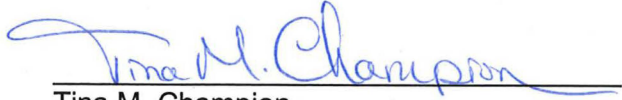
The evidence supports that the Facility's plan to discharge the Appellant to a shelter, while unfortunate, is appropriate.

DECISION

Martine Center for Rehabilitation and Nursing has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Martine Center for Rehabilitation and Nursing is authorized to discharge the Appellant in accordance with its discharge plan on or after [REDACTED], 2019.
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.

DATED: Albany, New York
January 4, 2019


Tina M. Champion
Administrative Law Judge

TO: [REDACTED]
12 Tibbits Avenue
White Plains, New York 10606

[REDACTED]

Shragi Weisz, NHA
Martine Center for Rehabilitation and Nursing
12 Tibbits Avenue
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