



**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 8, 2019

CERTIFIED MAIL/RETURN RECEIPT

Miriam Schenker, Administrator
King David Center for Nursing & Rehabilitation
2266 Cropsy Avenue
Brooklyn, New York 11214

██████████
c/o King David Center for Nursing &
Rehabilitation
2266 Cropsy Avenue
Brooklyn, New York 11214

RE: In the Matter of ██████████ – 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**

In the Matter of an Appeal, pursuant to
10 NYCRR § 415.3, by

██████████

Appellant,

from a determination by

**King David Center for
Nursing and Rehabilitation**

Respondent,

to discharge him from a residential
health care facility.

ORIGINAL

DECISION

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held at: King David Center for Nursing and Rehabilitation
2266 Cropsey Avenue
Brooklyn, New York 11214

Hearing Date: December 18, 2018
The record closed January 31, 2019

Parties: King David Center for Nursing and Rehabilitation
By: Miriam Schenker, Administrator
2266 Cropsey Avenue
Brooklyn, New York 11214

██████████
Pro Se

JURISDICTION

By notice dated [REDACTED] 2018, King David Center for Nursing and Rehabilitation (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (the Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(h).

HEARING RECORD

Facility witnesses: Yuliana Borisova, Social Worker
Facility exhibits: 1-6
Appellant witnesses: [REDACTED], Appellant
Appellant exhibits: A-C

The notice of hearing, discharge notice, and the accompanying cover letter were marked as ALJ Exhibit I. A digital recording of the hearing was made.

ISSUES

Has King David Center for Nursing and Rehabilitation established that its determination to discharge the Appellant was correct and that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2016 for short-term rehabilitation. (Facility Exhibits 5 and 6.)
2. The Appellant’s medical diagnoses are: [REDACTED]
[REDACTED]
[REDACTED]. The Appellant is also diagnosed with the following [REDACTED] conditions: [REDACTED]
[REDACTED]. (Facility Exhibit 6; Appellant Exhibit C.)

(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;

The residential health care facility must prove by substantial evidence that the discharge was necessary, and the discharge plan appropriate. 10 NYCRR § 415.3(h)(2)(iii); State Administrative Procedure Act § 306(1).

DISCUSSION

The Appellant was admitted to the Facility from Kings County Hospital on [REDACTED], 2016 for short-term rehabilitation. During his stay at the Facility, he has undergone surgical [REDACTED], which necessitated further physical and occupational rehabilitation therapies. However, the Appellant has long since completed all therapies. The Appellant's physical conditions are now stable and require neither medical nor skilled nursing intervention. (Recording @ 3:19.) He is independently able to perform all activities of daily living. (Facility Exhibit 5.) The Facility currently provides medication to the Appellant, which he may also obtain in the community. (Recording @ 9:55.) Dr. Nesa, the Appellant's attending physician at the Facility, has determined that the Appellant may be safely discharged. (Facility Exhibit 4.)

The Appellant is contesting the Facility's determination that he does not require services provided by a skilled nursing facility. He contended that the Facility provides him with his medications, medical attention, and his meals. (Recording @ 12:38.) The Appellant did not identify a needed service that is uniquely provided by a skilled nursing facility.

The Facility proposes to discharge the Appellant to a [REDACTED] shelter, a discharge plan which Dr. Nesa concluded is safe and appropriate. (Facility Exhibit 4.) The Appellant does not have a home in the community, and he currently has no income. Although Facility social workers attempted placement for the Appellant at an assisted living facility, the social workers were advised that the Appellant's present lack of income and his age rendered him ineligible. The Facility's social workers also submitted housing applications to several charitable organizations. The Appellant's name is now included on waiting lists for apartments which may never become available. Because he has no income, many regular landlords have refused to consider him for housing, despite the Appellant's eligibility for a [REDACTED] housing voucher. The Appellant lost his Public Assistance benefits (which included the other portion of a housing allowance for full coverage of his rent) once he was admitted to the Facility for long-term care. The Facility's Administrator thus concluded that the Appellant would be best able to reclaim his life and independence by being discharged. (Recording @ 7:08.)

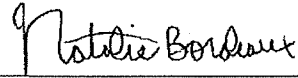
In response to the Appellant's expressions of concern for his [REDACTED] limitations if discharged, particularly to a shelter, the hearing record remained open for the parties' submission of additional information regarding the Appellant's [REDACTED] conditions and limitations. However, the information provided by the Facility and on the Appellant's behalf only confirmed that the Appellant is independent, has no functional limitations pertaining to his [REDACTED] [REDACTED] and is motivated to obtain gainful employment. (Appellant Exhibits B and C.) The Appellant's conditions are controlled and satisfy [REDACTED] criteria for a medically appropriate discharge to the shelter.

The Facility's determination is therefore sustained.

DECISION

King David Center for Nursing and Rehabilitation has established that its determination to discharge the Appellant was correct and that its discharge plan is appropriate.

Dated: February 7, 2019
New York, New York



Natalie J. Bordeaux
Administrative Law Judge