



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 1, 2019

CERTIFIED MAIL/RETURN RECEIPT

Sabrina Charles, Administrator
Mayfair Care Center
100 Baldwin Road
Hempstead, New York 11550

[REDACTED]
c/o Mayfair Care Center
100 Baldwin Road
Hempstead, New York 11550

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

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

██████████,

Appellant,

from a determination by

MAYFAIR CARE CENTER

Respondent,

to discharge her from a residential health facility

ORIGINAL

DECISION

The Mayfair Care Center (Facility) issued a Notice of Transfer/Discharge, dated ██████████ 2019, to ██████████ (Resident). The Resident appealed the Facility's proposed discharge. Administrative Law Judge (ALJ) William J. Lynch, Esq., held a hearing on June 25 and July 30, 2019. The Hearing was held in accordance with the Public Health Law of the State of New York; Parts 51 and 415 of 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); and the New York State Administrative Procedure Act (SAPA). Evidence was received; witnesses were sworn or affirmed and examined. An audio recording of the proceeding was made.

The hearing was held at the Facility located at 100 Baldwin Road, Hempstead, New York. The following individuals participated in the hearing: ██████████, Resident; Sabrina Charles, Administrator; Abiola Famillusi, M.D. (by telephone), Venesia Daniel-Allen, Social Worker; Christina Scardillo-Miccoli, Rehabilitation Director.

ISSUES

The Facility determined the Resident's health had improved sufficiently so that she no longer needed its services and proposed discharging the Resident. The issues to be determined in this proceeding are whether the proposed discharge is necessary and whether the discharge plan is appropriate. The Facility has the burden of proving its case by substantial evidence (SAPA § 306[1], 10 NYCRR § 415.3[h][2][iii]).

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 the audio recording of the hearing or exhibits. These citations represent evidence found persuasive in arriving at a particular finding.

1. The Resident is a [REDACTED]-year-old female admitted to the Facility on [REDACTED] 2015. Her diagnoses include [REDACTED] and [REDACTED] pain. (Ex. 1.)
2. The Resident completed a course of physical therapy. She can ambulate with a walker but chooses to use a wheelchair. (Recording 1 @ 9:10, 56:00.)
3. The Resident has been diagnosed with a [REDACTED]. However, she denies having any mental illness and has refused to take the medications which have been prescribed to treat this illness. (Ex. 5, 6, 7; Resident Ex. B.)
4. The Resident's attending physician, Abiola Famillusi, M.D., and the Interdisciplinary Care Team has determined that the Resident does not require any skilled nursing care at this time and is independent in her activities of daily living. (Recording 1 @ 56:30; Ex. 2, 3.)
5. The Facility has made several referrals attempting to arrange placement in an adult home, but they have been unsuccessful. (Recording 2 @ 23:40; Ex. 5.)

6. On [REDACTED], 2019, the Facility issued a discharge notice proposing discharge to the [REDACTED] County Department of Social Services (DSS) for Shelter placement. (Ex. 4.)

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]). In this instance, 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 has established through the testimony of its witnesses that the Resident no longer needs placement in a skilled nursing facility. She can independently perform the activities of daily living and requires no skilled nursing services.

The Resident claims that she needs to remain in the Facility because she is scheduled for [REDACTED] surgery; however, a planned surgery is not a basis for remaining in a skilled nursing facility. I also note that the Resident's attending physician states that he has examined the Resident and is of the opinion that she does not require [REDACTED] surgery though he felt that she should pursue an [REDACTED] assessment if she felt one was warranted.

The Resident alleges that Facility staff have damaged her property and put an unknown substance in her [REDACTED] while she is sleeping. As stated earlier, the Resident denies any [REDACTED] illness and has refused to take the prescribed medication in spite of the Facility's repeated attempts at intervention. These allegations are most likely related to the Resident's [REDACTED] diagnosis, and in any event are not a basis for her to remain in a skilled nursing facility.

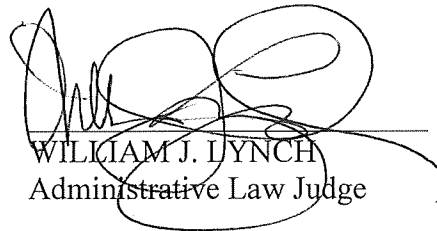
The discharge plan includes providing DSS with referral information three days in advance of discharge, providing the Resident with prescriptions and a referral to [REDACTED] County Medical Center for follow up medical services, providing any required durable medical equipment, and providing transportation to DSS.

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 the discharge plan is appropriate.

DECISION AND ORDER

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

DATED: Albany, New York
July 31, 2019


WILLIAM J. LYNCH
Administrative Law Judge