



Department of Health

ANDREW M. CUOMO
Governor

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

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

June 28, 2019

CERTIFIED MAIL/RETURN RECEIPT

██████████
Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591

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

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

[REDACTED]

Appellant,

from a determination by

TARRYTOWN HALL CARE CENTER

to discharge her from a residential health care facility.

COPY

DECISION

Before: Tina M. Champion
Administrative Law Judge

Held at: Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591

Date: June 18, 2019
Record Closed June 19, 2019

Parties: [REDACTED]
Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591
By: Pro Se

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

JURISDICTION

By notice dated [REDACTED] 2019, Tarrytown Hall Care Center (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: 1 – Letter with Notice of Hearing and Transfer/Discharge Notice (6/14/19)

Facility Exhibits: 1 – Discharge Plan
 2 – Discharge Summary
 3 – Medical Clearance Letter
 4 – Email from [REDACTED]
 5 – Letter from [REDACTED]
 6 – Email from [REDACTED]
 7 – Radiology Reports¹
 7A – Radiology Report
 8 – Progress Notes

Appellant Exhibits: None

¹ Exhibit 7 consists of radiology reports on images of the Appellant's [REDACTED]. A report on images of the Appellant's [REDACTED] had not yet been received by the Facility at the time of the hearing. The record was held open for 10 days for receipt of the missing radiology report. The Facility provided a copy to ALJ Champion on June 19, 2019 and it was received into evidence as Facility Exhibit 7A.

Facility Witnesses: Michelle Mercado, Social Worker
John Sofia, Physical Therapist Assistant
Sophia Manalil, Occupational Therapist
Kristal Boddie, RN, 3rd Floor Nurse Manager
Carolee Lee, Director of Social Services

Appellant Witnesses: Appellant testified on her own behalf

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2018 for short-term rehabilitation. (Facility Ex. 2; Testimony [T.] Mercado.)
2. The Appellant has been receiving physical therapy (PT) and occupational therapy (OT) services from the Facility. (Facility Ex. 1; T. Mercado, Sofia and Manalil.)
3. On [REDACTED] 2019, the Facility issued a Notice of Transfer/Discharge to the Appellant which proposed discharge to "[REDACTED]" which is the [REDACTED] County Department of Social Services and assists with homeless shelter placement. (ALJ Ex. I.)
4. 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.)
5. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.
6. 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] for short-term rehabilitation. (T. Mercado.) She has received OT and PT from the Facility during her stay. John Sofia, a physical therapist assistant at the Facility, testified in detail regarding the Appellant's physical therapy functional levels upon admission in [REDACTED] 2018, upon evaluation in [REDACTED] 2019 following a hospital admission and subsequent return to the Facility, and at the present time. Mr. Sofia's testimony was based on his personal experience in working with the Appellant since [REDACTED] 2019 and his review of therapy records prior to that. Mr. Sofia testified that the Appellant presently functions independently with bed mobility and functions with modified independence for transfers and ambulation. He elaborated that the Appellant has made consistent progress and that she can ambulate [REDACTED] to [REDACTED] feet with a rollator, can ascend and descend [REDACTED] steps with bilateral hand rails, can ascend and descend [REDACTED] steps with a single hand rail, and that her strength has been increasing. He also testified that she can have periods of [REDACTED] but that he received no complaints of such within the past week. Mr. Sofia testified that he has no concerns with the Appellant's ability to function safely within a shelter. (T. Sofia.)

Sophia Manalil, an occupational therapist at the facility, testified in detail regarding the Appellant's occupational therapy functional levels over the course of the Appellant's stay at the Facility. Ms. Manalil testified that those levels are either modified independent or independent, and that the Appellant does not need assistance from another person but that some activities such as grooming may take the Appellant a little longer to complete. Ms. Manalil expressed no concerns over the Appellant's ability to function safely within a shelter. (T. Manalil.)

Kristal Boddie, a registered nurse and the nurse manager of the third floor at the Facility, testified that the Appellant takes several medications, all of which are obtainable in the community and can be administered by the Appellant herself without issue as the Appellant is of sound mind.

Ms. Boddie also expressed no concerns over the Appellant's ability to function safely within a shelter. (T. Boddie.)

Walter Szpur, M.D., the Appellant's medical doctor at the Facility, has determined that the Appellant is medically cleared for discharge from the Facility. (Facility Ex. 3.). Dr. Szpur referenced in his medical clearance note on [REDACTED] 2019 that the Appellant can safely ambulate [REDACTED] feet with a rollator, can ascend/descend stairs utilizing bilateral handrails, and is modified independent with all activities of daily living. (Facility Ex. 3.)

The Appellant argues that she still requires a skilled nursing facility because she is not medically ready for discharge. (T. Bogart.) However, she did not provide any evidence to support her contention other than testimony that she needs a little more time at the facility. (T. Bogart.) Her position is overwhelmingly contradicted by the Facility's medical note and the testimony of Mr. Sofia, Ms. Manalil, and Ms. Boddie.

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

Discharge Location

The Facility has proposed discharging the Appellant to "[REDACTED] [REDACTED]" which is the [REDACTED] County Department of Social Services and assists with homeless shelter placement. (ALJ Ex. 1.) As stated above, a Facility medical doctor noted on [REDACTED] 2019 that the Appellant was medically cleared for discharge. (Facility Ex. 3.) The medical doctor further specified that the Appellant is cleared to be discharged to the Department of Social Services for shelter placement. (Facility Ex. 3.) The Facility witnesses credibly testified that the Appellant is independent or modified independent with activities of daily living and that they have

no concerns with the Appellant's ability to safely function within a shelter setting. (T. Sofia, Manalil and Boddie.)

Michelle Mercado, the Facility Social Worker, testified that the Facility considered alternative placements to a homeless shelter. She testified that during discharge planning discussions the Appellant agreed upon being discharged to an assisted living facility of her choice. As such, Ms. Mercado arranged for a referral agency, [REDACTED], to assist the Appellant with finding an appropriate assisted living facility. With the assistance of the referral agency, the Appellant applied for and was accepted into [REDACTED], contingent on being awarded Social Security Disability. Ms. Mercado testified that the Appellant's monthly income is not enough to cover the monthly expenses at [REDACTED] and that admission to [REDACTED] is "on hold" until Social Security Disability is approved, which is not guaranteed and could take months even if it is eventually approved. Ms. Mercado contacted the Appellant's family, but they were unwilling or unable to assist the Appellant. Ms. Mercado testified that the Appellant has a trust fund of approximately \$ [REDACTED] but that the Appellant has indicated she is unwilling to use that money for her housing. (T. Mercado; see also Facility Exs. 4 and 5.) Ms. Mercado also testified that the Appellant is not eligible for most assisted living facilities because she is [REDACTED] and most require that residents be at least [REDACTED] years of age. (T. Mercado.)

The Appellant testified that she ultimately wants to get a new apartment with a friend. That friend is currently in an apartment but cannot accommodate the Appellant due to a lack of space. The Appellant testified that she is unwilling to take money from her trust for current housing needs. She vehemently testified that she will not go to a shelter environment due to concerns with cleanliness, violence, quality of food, odors, and sexual propositioning. She stated that she would rather sleep on the sidewalk than in a shelter. The Appellant also stated that she could stay with

her significant other in [REDACTED], although the length of time she would be able to stay is unclear from the evidence. (T. Bogart.)

The Appellant has cooperated in applying for Social Security Disability and providing all necessary information to facilitate her application. (Facility Ex. 2; T. Mercado.) However, there is no guarantee that the Appellant will be approved and, even if approved, the process could take a considerable amount of time. The Appellant no longer needs skilled nursing services. While it is her choice whether to utilize her available trust funds to provide herself with housing at [REDACTED] or elsewhere, the Appellant cannot continue to occupy a skilled nursing bed that she does not need because of that choice.

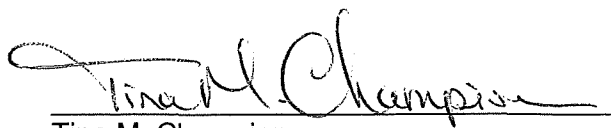
The evidence supports that the Facility's plan to discharge the Appellant to a shelter is appropriate.

DECISION

Tarrytown Hall Care Center has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Tarrytown Hall Care Center 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
June 27, 2019



Tina M. Champion
Administrative Law Judge

TO: [REDACTED]
Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591

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