



**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

[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

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

[REDACTED]

Appellant,

from a determination by

TARRYTOWN HALL CARE CENTER

to discharge him 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 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: I – Letter with Notice of Hearing and Transfer/Discharge Notice (6/14/19)

Facility Exhibits:¹

- 1 – Discharge Plan
- 2 – Hospital Note
- 3 – Discharge Summary
- 4 – Medical Clearance Letter
- 5 – Progress Notes
- 6 – Consultation Reports

Appellant Exhibits: None

Facility Witnesses:

- Michelle Mercado, Social Worker
- Naura Pare, Physical Therapist Assistant
- Rickordo Nelson, Occupational Therapist Assistant
- Nelly Fitzpatrick, RN, Assistant Director of Nursing
- Kristal Boddie, RN, 3rd Floor Nurse Manager

Appellant Witnesses: Appellant testified on his own behalf

¹ On June 21, 2019, the Facility sent ALJ Champion an email with information purportedly regarding the Appellant's refusal to receive rehabilitation services subsequent to the hearing. This information was received after the close of the record in this matter and was not considered in rendering this Decision.

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2019 for short-term rehabilitation. (Facility Ex. 3; 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, Pare and Nelson.)
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], 2019 for short-term rehabilitation. (T. Mercado.) He has received OT and PT from the Facility during his stay. Naura Pare, a physical therapist assistant at the Facility, testified in detail regarding the Appellant's physical therapy functional levels upon evaluation the day after his admission and as of the date of this hearing. Ms. Pare testified that the Appellant presently functions independently in all areas with at least modified independence. She further testified that he safely ambulates with a rollator despite complaints of pain in his [REDACTED]. (T. Pare.) Rickordo Nelson, an occupational therapist assistant 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. Mr. Nelson testified that as of the day prior to this hearing the Appellant was able to perform all necessary tasks with modified independence but did note that the Appellant has [REDACTED] pain. (T. Nelson.) Neither Ms. Pare nor Mr. Nelson expressed concerns with the Appellant's ability to function safely within a shelter. (T. Pare and Nelson.)

Nelly Fitzpatrick, a registered nurse and the Assistant Director of Nursing, testified that the Appellant takes several medications, all of which are obtainable in the community and can be administered by the Appellant himself. Ms. Fitzpatrick also expressed no concerns over the Appellant's ability to function safely within a shelter. (T. Fitzpatrick.)

Lawrence Goldstein, 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. 4.). Dr. Goldstein referenced in his medical clearance note on [REDACTED], 2019 that the Appellant can "safely ambulate [REDACTED] feet with a rollator and can independently maneuver his rollator on all surfaces; making it safe for him to be discharged" from the Facility. (Facility Ex. 4.)

The Appellant argues that he still requires a skilled nursing facility because he is not medically ready for discharge. He testified that he has a lot of pain and [REDACTED] that includes

witnesses credibly testified that the Appellant is at least 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. Pare, Nelson and Fitzpatrick.)

Michelle Mercado, the Facility Social Worker, testified that the Facility considered alternative placements to a homeless shelter. She testified that she contacted the Appellant's family but that they were unwilling or unable to assist the Appellant with housing or finances for housing. Ms. Mercado testified that she also contacted the Appellant's previous social worker from [REDACTED] Medical Center, who the Appellant stated was assisting him with housing, but that social worker indicated there was a lack of options for the Appellant due to a lack of income. Ms. Mercado also testified that upon the Appellant's admission to the Facility she provided him with information on Social Security Disability and encouraged him to apply but does not believe that the Appellant has engaged in the application process. (T. Mercado.)

The Appellant testified that he does not want to go to a shelter and primarily expressed concerns over his ability to utilize the [REDACTED] he has that reads his [REDACTED] (T. Paulson.) The parties described the [REDACTED] as a device that is approximately [REDACTED] in length and width, and a [REDACTED]. (T. Paulson and Boddie.) The device is [REDACTED] but the Appellant expressed concern about carrying the [REDACTED] around with him and his ability to connect to the [REDACTED] device for [REDACTED] because it needs Wi-Fi to occasionally read the information from the device. (T. Paulson and Boddie.) The [REDACTED] is not necessary for the operation of the [REDACTED] device that is implanted in the Appellant and the device will function to [REDACTED] the Appellant's [REDACTED] as necessary without [REDACTED]; however, the [REDACTED] is a tool that is used to collect information about the Appellant's [REDACTED] that is utilized by his [REDACTED] (T. Paulson and Boddie.) Ms. Mercado testified that she has personal knowledge

that many shelters have Wi-Fi and that the shelter placement office would take into account the Appellant's medical needs when placing him in a shelter. (T. Mercado.)

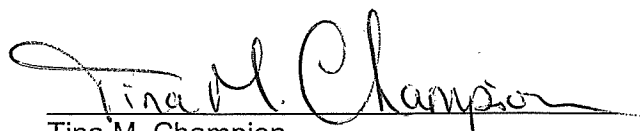
The evidence supports that the Facility's plan to discharge the Appellant to a shelter is appropriate. Near the conclusion of this hearing, the Appellant indicated that if he is to be discharged to a shelter that he would prefer to be in [REDACTED] County instead of [REDACTED] County, but that he was concerned about a lack of shelters in [REDACTED] County. The Facility offered to investigate whether there are shelters currently available in [REDACTED] County.

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 to the Appellant's choice of either the [REDACTED] or [REDACTED] County Department of Social Services on or after [REDACTED] 2019.
2. The Appellant is directed to choose whether he wants to be discharged to [REDACTED] or [REDACTED] County and inform Tarrytown Hall Care Center of his choice no later than [REDACTED], 2019.
3. If the Appellant fails to choose between [REDACTED] and [REDACTED] County as his discharge location by [REDACTED], 2019, then Tarrytown Hall Care Center is authorized to discharge the Appellant to [REDACTED] County Department of Social Services on or after [REDACTED] 2019 in accordance with its [REDACTED] 2019 discharge plan.
4. 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