



Department of Health

ANDREW M. CUOMO
Governor

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

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

October 21, 2019

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Bronx Park Rehabilitation & Nursing Center
3845 Carpenter Avenue
Bronx, New York 10467

Steven L. Freifeld, Administrator
Bronx Park Rehabilitation & Nursing Center
3845 Carpenter Avenue
Bronx, New York 10467

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

Bronx Park Rehabilitation and Nursing Center,
Respondent,

to discharge her from a residential health care facility.

ORIGINAL

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Bronx Park Rehabilitation and Nursing Center
3845 Carpenter Avenue
Bronx, New York 10467

Hearing Date:

September 18, 2019
The hearing closed on October 11, 2019

Parties:

Bronx Park Rehabilitation and Nursing Center
By: Steven L. Freifeld, Administrator

██████████
Pro Se (with assistance of a ██████████ interpreter)

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as Bronx Park Rehabilitation and Nursing Center (“Respondent” or “Facility”) is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(h). Respondent determined to discharge █ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(a)(2) which provides, in pertinent part:

- (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.

Appellant appealed the discharge determination, and a hearing on that appeal was held. Pursuant to 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

A transcript of the hearing was made part of the record. Appellant appeared and testified on her own behalf, and Mr. █ (a Facility resident) testified for Appellant. The following witnesses testified for Respondent: Mehmet Cetin, M.D.–Attending Physician, Michelle Ortega–Activities Supervisor, Melissa Dale–Director of Dietary Services, Angelito Esteban–PT Supervisor, Nimesh S. Nanwani–Occupational Therapist, Dorys Gil–Director of Rehabilitation,

Jaelyn Ryan—Director of Social Services, Rosalinda Lagdameo, R.N.—Nursing Supervisor,
Adelinda Busante, R.N.—Director of Nursing, and Steven L. Freifeld—Administrator.

The following documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ and Facility Exhibits:

ALJ:

- I: Notice of Hearing with the Facility’s Discharge Notice attached

Facility:

- 1: Activities notes
- 2: Nursing notes
- 3: Social Services notes
- 4: Medical notes
- 5: Rehabilitation notes
- 6: Dietary notes

Appellant was given the opportunity but did not offer any exhibits.

ISSUE

Has Bronx Park Rehabilitation and Nursing Center established that the transfer is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to transcript pages (“T”) and exhibits (“Ex”) found persuasive in arriving at a particular finding.

1. Respondent, Bronx Park Rehabilitation and Nursing Center (“Bronx Park”) is a residential health care facility located in Bronx, New York. (Ex 1)
2. Appellant, █, age █ was admitted to the Facility on █4, 2019, for short-term rehabilitation. Appellant was discharged from PT and OT (physical and occupational therapy) on █ 2019, when she reached her maximum potential with these skilled services. Appellant is independent in her ADLs (activities of daily living), she goes out on pass, and she ambulates independently with a cane. (Ex 2; Ex 3; Ex 5; T 20-22, 31-34, 37, 46, 59-60)

█ / Bronx Park

3. By notice dated █, 2019, Respondent advised Appellant that it had determined to discharge her on the grounds that her health has improved sufficiently so that she no longer needs the services provided by the Facility. (Ex I)

4. Appellant's past and present medical conditions include █

█ These conditions, including Appellant's risk factors for their continuation and/or potential recurrence in the future, can be treated in the community. (Ex 2; Ex 4; Ex 5; T 20-22, 31-33)

5. Respondent's discharge plan is to discharge Appellant to the █ Shelter ("Shelter" or "█" located at █.

Transportation to the Shelter will be provided, and Appellant will be discharged with a quad cane, prescriptions for her medications, and referrals for community therapy including PT and OT. Appellant will be reassessed before discharge to determine what if anything else is required. The Shelter will provide food, laundry service, and assistance with securing permanent housing and seeking social security benefits. (Ex I; T 33-35, 41, 46-47)

6. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's physician, that discharge to the community, including the Shelter where she previously resided, is appropriate for Appellant who requires no skilled care and is independent in her ADLs and capable of managing her medications and medical treatment in the community. (Ex 1; Ex 2; Ex 3; Ex 4; Ex 5; Ex 6; T 23, 29, 33, 38-39, 41, 60)

7. Appellant has remained at Bronx Park Rehabilitation and Nursing Center pending the outcome of this proceeding.

DISCUSSION

The evidence presented by Respondent demonstrated that: Appellant completed her rehabilitative services; she is independent with her ADLs; she has no skilled needs; her medical conditions are chronic but stable and can be treated in the community; she is capable of managing her health care needs; she ambulates freely with a cane; she goes out on pass; and discharge to the Shelter where she previously resided is a safe and appropriate discharge plan for Appellant.

Appellant is concerned about being discharged back to █ where she resided prior to admission to the Facility because she does not feel competent climbing stairs or walking on uneven surfaces in the community, she is in pain, and she sometimes feels █, and/or on the █. Mr. █ testified that he helps Appellant steady herself when she feels █ or █

Respondent's witnesses testified that Appellant will be eligible for community therapy but that she no longer requires Facility therapy or other skilled care, and that her current condition warrants discharge to the Shelter. Dr. Cetin testified that Appellant has had no █ since her admission to the Facility, and the █ whom Appellant sees in the community has not recommended any changes to her treatment.

Testimony at the hearing revealed that █ had not yet informed Respondent of whether it was accepting Appellant back to █ and that Appellant was complaining that she was recently not able to bathe herself. Respondent agreed to follow up with █ and to immediately reassess Appellant's ADL status. A conference call was scheduled to address this. Ms. Ryan reported on the conference call that █ "cleared" Appellant for discharge back to █ and that because Appellant ambulates with a cane Franklin requested that Appellant be

█ / Bronx Park

sent to █ between the hours of 9 a.m. and 3 p.m. Ms. Gil reported that PT and OT evaluated Appellant and found that there was no change since Appellant was discharged from rehabilitative services on █. The charge nurse, Mary, reported that the nursing department's evaluation of Appellant revealed that Appellant is independent in all her ADLs, including bathing, and that there is no reason for Appellant to remain in the Facility.

CONCLUSION

Respondent has proven that Appellant's health has improved sufficiently that she no longer requires skilled care, and that discharge to the Franklin Shelter where Appellant previously resided is appropriate for Appellant at this time. Speculation by Appellant that she might fall or that her medical conditions might worsen in the future is not sufficient to warrant remaining in a skilled facility when there are no skilled needs, and the discharge location, which has accepted her, has been shown to be appropriate.

DECISION

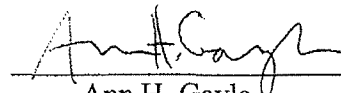
I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Bronx Park Rehabilitation and Nursing Center, is authorized to discharge Appellant in accordance with the █, 2019 discharge notice.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

Dated: New York, New York
October 21, 2019


Ann H. Gayle
Administrative Law Judge

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TO: ██████████
c/o Bronx Park Rehabilitation and Nursing Center
3845 Carpenter Avenue
Bronx, New York 10467

Steven L. Freifeld, Administrator
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