



Department of Health

ANDREW M. CUOMO
Governor

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

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

September 27, 2019

CERTIFIED MAIL/RETURN RECEIPT

Estela Divino, DSW
Regal Heights Rehabilitation & Health
70-05 35th Avenue
Jackson Heights, New York 11372

[REDACTED]
c/o Regal Heights Rehabilitation & Health
70-05 35th Avenue
Jackson Heights, New York 11372

Barbara Phair, Esq.
Abrams, Fensterman, et al.
3 Dakota Drive, Suite 300
Lake Success, New York 11042

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: nm
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

REGAL HEIGHTS REHABILITATION
AND HEALTH CARE CENTER

Respondent,

to discharge her from a residential health facility

ORIGINAL

DECISION

The Regal Heights Rehabilitation and Health Care Center (Facility) issued a Notice of Transfer/Discharge, dated ██████████ 2019, to ██████████ (Resident), and the Resident appealed the Facility's proposed discharge. Administrative Law Judge (ALJ) William J. Lynch, Esq., held a hearing on September 19, 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 following individuals attended the hearing: ██████████, Resident; Stephanie De Jesus, M.D., Medical Director; Kevork Boyadjian, M.D., Attending Physician; Tenzin Norby, R.N., Nursing Supervisor; Elizabeth Matta, Social Worker; Ahmed Abdelhakim, D.P.T., Director of Rehabilitation, and Barbara Phair, Esq., Attorney for the Facility.

ISSUES

The Facility determined the Resident's health had improved sufficiently so that she no longer needed its services and proposed discharging the Resident to her apartment. The issues to be determined in this proceeding are whether the proposed discharge is necessary and whether the discharge plan is appropriate. Respondent 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 ■-year-old female admitted to the Facility on ■ 2019 for short-term rehabilitation after undergoing a ■. (Facility Ex. 4; Recording @ 18:30.)
2. The Resident completed her course of rehabilitation on ■, 2019. She can perform all activities of daily living independently and ambulate with a rolling walker. (Facility Ex. 3; Recording @ 5:30.)
3. The Interdisciplinary Care Team, including the attending physician, has determined that the Resident is ready for discharge back to her home in the community. (Facility Ex. 3, 4; Recording @ 20:15.)
4. The Facility has ordered a shower chair, commode and rolling walker for the Resident to use at home. (Facility Ex. 1; Recording @ 14:30.)

5. The Facility's social worker has made a referral for the Visiting Nurse Service to assess the need for homecare services. (Facility Ex. 1; Recording @ 28:30.)

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 that the Resident no longer needs placement in a skilled nursing facility, and the Resident agrees that she is able to return to her apartment.

The Resident stated that her concern about going home was that she had no family to help her with shopping, laundry and cooking. The Facility social worker explained to the Resident on the record the steps that have been taken to ensure that the referral for homecare services has been made, that the necessary durable equipment will be available at the time of discharge, that necessary prescriptions have been issued, and that follow up appointments with her physicians will be arranged.

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

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

2. This Decision shall be effective upon service on the Appellant by personal service or by certified or registered mail.

DATED: Albany, New York
September 26, 2019



WILLIAM J. LYNCH
Administrative Law Judge