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**Department
of Health**

ANDREW M. CUOMO
Governor

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

LISA PINO, M.A., J.D.
Executive Deputy Commissioner

March 1, 2021

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Rutland Nursing Home
585 Schenectady Street
Brooklyn, New York 11203

Neil Pollack, Administrator
Rutland Nursing Home
585 Schenectady Street
Brooklyn, New York 11203

Susan M. Marotta, Esq.
One Brooklyn Health System, Inc.
One Brookdale Plaza
Brooklyn, New York 11212

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

-----X
In the Matter of an Appeal, pursuant to :
10 NYCRR § 415.3, by :
[REDACTED] :
Appellant, : DECISION
from a determination by :
RUTLAND NURSING HOME :
Respondent, :
to discharge him from a residential health :
care facility. :
-----X

Hearing Before: Sean D. O'Brien
Administrative Law Judge

Held via WEB EX

Hearing Dates: February 24 & 25, 2021

Parties: Rutland Nursing Home
By: Susan M. Marotta, Esq.
One Brooklyn Health Systems
One Brookdale Plaza
Brooklyn, New York 11212
[REDACTED] pro se

JURISDICTION

By notice dated [REDACTED], 2021, Rutland Nursing Home (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) Section 415.3(i).

HEARING RECORD

Facility Exhibits: 1-7

Facility Witnesses: Deborah Headley-Director of Social Services
Dr. Rekha Bhandari, Medical Director
Dr. Deepak Setia, Attending Physician
Marie Remfort-Nurse Manager

Appellant's Witnesses: [REDACTED] Resident

Appellant's Exhibit: A

Administrative Law Judge Exhibit 1: Notice of Hearing with Discharge Notice

A digital recording of the hearing was made part of the hearing record via WEB EX.

ISSUE

Has the Facility established that the determination to transfer/discharge is correct and the discharge plan for the Appellant is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (T) of witnesses and exhibits (Exhibit) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] [REDACTED], 2019, for short-term rehabilitation. His diagnoses include [REDACTED] [REDACTED] [REDACTED]. (Exhibits 1, 2, 3, 6, 7; T Headley, T Setia).

2. By notice dated [REDACTED] [REDACTED], 2021, the Facility determined to discharge the Appellant on [REDACTED] [REDACTED] 2021, because his "...health has improved sufficiently..." so that he no longer needs the services of a skilled nursing

facility. (Exhibits 2, 3, 4, 6, 7; T. Setia, T Headley, T Remfort).

3. The Facility determined to discharge the Appellant to the [REDACTED] shelter system where he has been accepted. (Exhibits 2, 3, 4, 6; T Headley).

4. At the time of his admission to the Facility, the Appellant did not need assistance in his Activities of Daily Living (ADLs) including ambulating, transferring and bathing. The goal of Appellant's short-term admission was to return the Appellant to the community. (Exhibits 1, 2, 3, 4, 6; T Setia, T Headley, T Remfort, T [REDACTED])

5. The Appellant has completed his short-term rehabilitation to the point where he no longer needs skilled nursing care, nor does he need assistance with his ADLs. (Exhibits 2, 3, 4, 5, 7; T Setia, T Headley, T Remfort, T [REDACTED])

6. The Appellant is capable of taking his own medications, can self-direct and is capable of making his own medical appointments. (Exhibits 2, 3, 4, 6; T Setia, T Headley, T Remfort).

7. The Appellant can ambulate independently without supervision. (Exhibits 2, 3, 4, 5, 6, 7; T Setia, T Remfort).

8. The Appellant will be discharged to the [REDACTED] Shelter system, [REDACTED] [REDACTED] [REDACTED] [REDACTED].

[REDACTED]. The Appellant does not have any income and is not eligible for an adult home stay or an assisted living location. (Exhibits 2, 3, 4, 6; T Headley).

9. It is the professional opinion of the Appellant's caregivers at the Facility, including the Facility's Medical Director, Attending Physician, Social Work Director and Nursing Supervisor that discharge to the [REDACTED] [REDACTED] [REDACTED] Shelter system is appropriate. (Exhibits 2, 3, 4, 6, 7; T Setia, T Remfort, T Headley.).

10. The Appellant remains at the Facility pending the outcome of the appeal.

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. Public Health Law Sections 2801(2)(3); 10 NYCRR Section 415.2(k).

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR Section 415.3[i][1]).

The Facility alleges the Appellant's discharge is permissible pursuant to 10 NYCRR Section 415.3(i)(1)(i)(a)(2 and (3), which state in relevant part:

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 safety of the individuals in the facility is endangered....

Under the hearing procedures at 10 NYCRR Section §415.3(i)(2)(ii), the Facility bears the burden to prove a discharge necessary and the discharge plan is appropriate. Under the New York State Administrative Procedures Act (SAPA) Section 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; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 (3rd Dept. 1984), appeal dismissed 63 N.Y.2d 649.

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED], 2019, for short-term rehabilitation. His medical conditions included [REDACTED]. At the time of his admission to the Facility and through the present day, the Appellant is independent with all ADLs. (Exhibits 1, 2, 3, 4, 5; T Setia, T Remfort).

By [REDACTED], 2021, the Appellant had made sufficient improvement medically so that he longer needs skilled nursing care at the facility. Ms. Marie Remfort, RN, a Director of Nursing testified the Appellant has hit all the benchmarks for his physical and occupational therapy. Ms. Remfort further testified the Appellant can ambulate without supervision. (Exhibits 2, 3, 4, 5, 6, 7; T Remfort).

Ms. Deborah Headley, the Director of Social Work at the Facility, testified the Appellant is being discharged back to the community, and in particular, the [REDACTED] shelter system. This is because his prior living arrangement is no longer available and the Appellant does not have the financial resources for other placement locations. (Exhibit 6; T Headley).

Importantly, Dr. Rekha Bhandari, the Medical Director at the Facility testified the Appellant does not require nursing home placement and can be discharged to the [REDACTED] shelter system. In addition, the attending physician of the Appellant, Dr. Deepak Setia, testified the Appellant does not

require the level of medical care of a nursing home. The Appellant testified on his own behalf and made it known he does not want to be discharged because he claims that he is not medically ready. He did not, however, provide any medical justification to support his position that he must remain in the Facility. Therefore, the Facility has met its burden of establishing valid grounds that the discharge of the Appellant is necessary because the Appellant no longer needs nursing home care. 10 NYCRR Section 415.3(i)(1)(i)(b).

The discharge plan to the community and to the [REDACTED] shelter system, in particular, is appropriate. The Appellant does not have any income and is not eligible for discharge to an assisted living location or an adult home. In addition, the Appellant is capable of making his own medical appointments and is alert, oriented and can ambulate independently. (Exhibits 2, 3; T Setia, T Remfort, T Headley). The discharge plan addresses the medical needs and personal care needs of the Appellant post discharge. 10 NYCRR Section 415.3(i)(1)(vi).

At the [REDACTED] shelter a social worker will be assigned to the Appellant to assist him regarding housing, meals

and medications. In addition, the Appellant's scripts and necessary medical referrals will be made. The health care the Appellant will still require can be provided on an outpatient basis and does not require nursing home placement. (Exhibit 7; T Setia, T Remfort, T Headley).

The Facility has adequately planned for the Appellant's discharge. The Facility's actions sufficiently address the medical needs of the Appellant post discharge. 10 NYCRR Section 415.3(i)(1)(vi).

Further, because the Appellant's health has improved to the point where he no longer needs nursing home care, there is no need to address the issue as to whether the Appellant is placing the safety of other residents at risk due to his alleged violations of the Facility's internal COVID-19 infection control protocols.

CONCLUSION

The Rutland Nursing Home has proven that its determination to discharge the Appellant is correct and the discharge plan is appropriate.

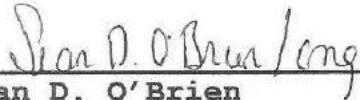
DECISION

The appeal by Appellant is therefore DENIED.

The Facility is authorized to discharge Appellant in accordance with [REDACTED], 2021 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: Albany, New York
March 1, 2021**


Sean D. O'Brien
Administrative Law Judge

To: Mr. [REDACTED] [REDACTED]
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Brooklyn, New York 11203

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