



Department of Health

ANDREW M. CUOMO
Governor

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

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

March 28, 2017

CERTIFIED MAIL/RETURN RECEIPT

Angela C. Bellizzi, Esq.
c/o Legal Department
Fordham Nursing & Rehab
2678 Kingsbridge Terrace
Bronx, New York 10463

██████████, Resident
c/o Fordham Nursing & Rehab
2678 Kingsbridge Terrace
Bronx, New York 10463

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: mw
Enclosure

COPY

STATE OF NEW YORK : DEPARTMENT OF HEALTH

In the Matter of
█/Fordham Nursing and Rehab. Center

Administrative Law Judge's Decision

Appeal from a Nursing Home Resident Involuntary Discharge pursuant to Title 10 (Health) of the Official Codes, Rules and Regulations of the State of New York (NYCRR) §415.3(h)

Before: Administrative Law Judge (ALJ) James F. Horan

For Fordham Nursing and Rehab. Center (Facility): Angela C. Bellizzi, Esq.

For Resident █ (Appellant): Pro Se

The Facility proposes to discharge involuntarily the Appellant nursing resident to the █ Shelter █ on the grounds that the Appellant's condition has improved sufficiently so that he no longer requires care in a nursing home. The Appellant argued at hearing that he still suffers the same problems as when he entered the Facility, numbness in the █ of his █ and that at █ years old, he is inappropriate for discharge to a shelter. The Facility offered testimony and exhibits into the record at the hearing and the record remained open after the hearing to receive further exhibits from both parties. After considering the record, the ALJ dismisses the discharge notice, because the Facility has failed to take sufficient steps to find a safe and appropriate discharge location.

I. Background

Under Title 10 NYCRR § 415.3(h), a nursing home resident holds certain rights in regard to transfer or discharge. Title 10 NYCRR § 415.3(h)(1)(i)(2) allows involuntary discharge if a

resident's health has improved sufficiently so that the resident no longer requires the services that the facility provides. Under the standards at 10 NYCRR § 415.2(k), a nursing home provides nursing and professional services twenty-four hours per day for patients who require those services, but do not require services in a general hospital. In effect, this proceeding acts as a stay on any discharge until the decision on the discharge appeal. If a decision approves the discharge grounds and discharge plan, the proceeding ends with the decision and the discharge may proceed according to the discharge plan.

The Facility provided a Discharge Notice [ALJ Exhibit I, Notice of Hearing] to the Appellant on [REDACTED] 2017. As grounds for the discharge, the Discharge Notice stated that the Appellant no longer requires services in a skilled nursing facility. The Facility proposed discharge to [REDACTED] at [REDACTED], within the [REDACTED] Shelter [REDACTED]. The Appellant then requested the hearing that took place at the Facility in Bronx County on [REDACTED] 2017. The ALJ conducted the hearing pursuant to New York Administrative Procedure Act (SAPA) Articles 3-5 (McKinney Supp. 2017), Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) Part 415 and Title 18 (Family Assistance) NYCRR Part 490.

At the hearing, the Appellant spoke on his own behalf. The Facility presented as witnesses Social Worker Jennifer Molina, Social Work Director Michael Tise, Occupational Therapist Johanna Romano, Physical Therapist Bathla Purnima, Nurse Zenaida Sumagaysay and Medical Director Dunstan Pulle. The ALJ received the following documents into the record:

ALJ Exhibit I	Notice of Hearing
ALJ Exhibit II	ALJ Letter to parties [REDACTED]/17
ALJ Exhibit III	ALJ Letter to parties [REDACTED]/17
ALJ Exhibit IV	ALJ Letter to parties [REDACTED]/17

Facility Exhibit 1	Transfer Discharge Notice
Facility Exhibit 2	Social Worker Written Statement
Facility Exhibit 3	Physician Progress Note [REDACTED]/17
Facility Exhibit 4	[REDACTED] Discharge Record
Facility Exhibit 5	[REDACTED] Discharge Papers
Facility Exhibit 6	Therapy Progress Notes
Facility Exhibit 7	Answers Concerning [REDACTED]

The ALJ received ALJ Exhibit I and Facility Exhibits 1-3 into the record on the hearing day. The ALJ received Exhibits 4-6 from the Facility on February 10, 2017. The ALJ then sent the marked Exhibits 4-6 to the parties and provided the Appellant the opportunity until February 24, 2017 to submit any comments on Exhibits 4-6 [ALJ Exhibit II]. The Appellant submitted no comments. The ALJ sent a letter to the parties on March 2, 2017 setting out four questions for the Facility to answer concerning the proposed discharge location, [REDACTED] [ALJ Exhibit III]. The Facility responded to the questions on March 9, 2017 and the ALJ received the answers into the record as Facility Exhibit 7 [ALJ Exhibit IV]. The record also included a digital audio recording from the hearing on Compact Disc (CD). References to testimony from the recording will indicate the time in the recording at which the testimony occurs (e.g. "CD at 12:40" means that the testimony occurs on the hearing recording 12 minutes and 40 seconds into that recording). The hearing record closed on March 15, 2017.

Under the hearing procedures at §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge 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 a conclusion or fact; less than preponderant 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. Under SAPA § 307(4), an agency may take official notice of all facts for which a court can take judicial notice, including the texts of statutes or regulations.

II. Findings of Fact

The references in brackets following the findings reflect testimony from the hearing recording or exhibits in evidence [Ex] on which the ALJ relied in making the findings. If contradictory information appears elsewhere in the record, the ALJ considered that information and rejected it.

1. The Appellant, a [REDACTED] year-old male, entered the Facility on [REDACTED], 2013 for rehabilitation [Ex. 3; CD at 8:59].
2. The Appellant's diagnoses include [REDACTED], [REDACTED] and [REDACTED] [Ex 3]. 3.
3. The Appellant lived at [REDACTED], a center for [REDACTED], for [REDACTED] years prior to beginning [REDACTED] for the [REDACTED] [CD at 36:09]. 4.
4. The Appellant has been discharged from both occupational and physical therapy at the Facility since 2016 [CD at 23:52]. 5.
5. The Appellant leaves the Facility on pass independently [CD at 34:04].
6. The Medical Director at the Facility, Dunstan Pulle, M.D., has determined that the Appellant is safe for discharge to the community, with follow up by a primary care physician [Ex 3].

III. Conclusions

The ALJ concludes from the exhibits and the testimony that the Appellant received legally appropriate notice about this discharge, pursuant to Title 10 NYCRR § 415.3(b).

The Facility has demonstrated that the Appellant no longer requires care in a skilled nursing facility. The testimony by Dr. Pulle indicated that the Appellant entered the Facility for rehabilitation and Therapists Purnima and Romano testified that the Appellant completed therapy last year. Dr. Pulle testified further that the Appellant can return safely to the community.

The Facility has failed to demonstrate, however, that they have done sufficient planning to assure a safe discharge. There was confusion among staff about the Respondent's status. Social Work Director Tise testified that the Appellant's out-on-pass privileges had been suspended, but Social Worker Molina stated that the Appellant's privileges remained in effect [CD at 33:30]. Ms. Molina testified that the Appellant received treatment for alcoholism and that hospital discharge records provided such information to the Facility. The Appellant denied having an [REDACTED] problem, but admitted to [REDACTED] for over [REDACTED] years and claimed that he had received treatment for drug addiction at [REDACTED]. The ALJ asked the Facility to provide the discharge records which stated that the Appellant suffered from an [REDACTED]. The records the Facility provided [Ex. 4-6] were poor photocopies, which were impossible to read and which provided no basis for concluding that the Appellant had received treatment for [REDACTED].

There was no evidence that the Facility made efforts to find the Appellant long term housing, even though the Appellant has been a resident at the Facility for the last [REDACTED] years. The Facility was aware that the Appellant had been a resident at [REDACTED] for some form of

██████████ treatment previously, but Ms. Molina testified that the Facility made no attempt to contact ██████████ about taking back the Appellant. Ms. Molina testified that the Facility had no success in the past in placing the Facility's residents in ██████████, although Ms. Molina also admitted that she had only worked at the Facility for eight months. Ms. Molina testified further that the Facility attempted to place the Appellant in adult homes, but that the adult homes rejected the Appellant. Ms. Molina indicated that adult homes refuse to take people with ██████████ (whether ██████████ or ██████████ due to concerns that such persons would pose behavior risks [CD at 37:45]. The ALJ questions why the Facility sought adult home placement for the Appellant at all considering that the Facility was aware of the Appellant's substance abuse history and also aware that adult homes refuse to take people with substance abuse histories.

The Facility must make further efforts to assure an appropriate placement for the Appellant.

ORDER

NOW; after considering the request for Hearing, the testimony and the documents in evidence, the ALJ issues the following Order:

The ALJ upholds that the Appellant's appeal from the January 4, 2017 Discharge Notice.

Dated: Menands, New York
March 27, 2017



James F. Horan
Administrative Law Judge

To:

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