



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

May 7, 2018

CERTIFIED MAIL/RETURN RECEIPT

Sharmin Foster
Director of Social Work
Triboro Center for Rehabilitation
1160 Teller Avenue
Bronx, New York 10456

[REDACTED]
C/o Triboro Center for Rehabilitation
1160 Teller Avenue
Bronx, New York 10465

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 /CAC
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
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

Triboro Center for Rehabilitation,

Respondent,

to discharge her from a residential health care facility.

COPY

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Triboro Center for Rehabilitation
1160 Teller Avenue
Bronx, New York 10456

Hearing Date:

May 3, 2018

Parties:

Triboro Center for Rehabilitation
By: Lorraine Whyte, Social Work Director

[REDACTED]

Pro Se

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 Triboro Center for Rehabilitation (“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 to the New York State Department of Health, 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 digital recording of the hearing was made part of the record. Appellant appeared and testified on her own behalf. The following witnesses testified for Respondent: Sherene Davis—Social Worker, April James—Director of Rehabilitation, Chantal Bowen, R.N.—Nurse Manager, Jasmine Lopez—HMO Coordinator, and Lorraine Whyte—Social Work Director.

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

ALJ:

I: Notice of Hearing and attached Facility Discharge Notice

Facility:

- 1: Discharge planning summary
- 2: Face sheet
- 3: Physician note
- 4: Insurance denial letter
- 5: Notice from home health care agency
- 6: Home health care agency referral
- 7: ADLs and medications
- 8: OT discharge summary
- 9: PT progress notes
- 10: Home health care agency packet

Appellant was given the opportunity but did not offer any documents into evidence.

ISSUE

Has Triboro Center for Rehabilitation established that the transfer is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

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

1. Respondent, Triboro Center for Rehabilitation (“Triboro”), is a residential health care facility located in Bronx, New York. (Ex I)

2. Appellant ██████████, age ██████ was admitted to the Facility from ██████ Hospital on ██████████ 2018, for ██████ term rehabilitation. Appellant’s medical conditions include ██████████

██████████ Appellant completed occupational and physical therapy, she is independent in all her ADLs (activities of daily living) and she does not receive any skilled care or services at the

Facility. Appellant's medical conditions can be treated in the community. (Ex 2; Ex 3; Ex 7; Ex 8; Ex 9; Ex 10; T Davis, James, Bowen, Whyte)

3. By notice dated ██████████ 2018, 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. Respondent's discharge plan is to transfer Appellant to her home in the community located in ██████████ (Ex I)

5. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's physician, that discharge to the community, including her home, with home care services, is appropriate for Appellant. Appellant will be discharged with a rollator, shower chair, prescriptions for her medications, and a 30-day supply of her medications. ██████████ a home health care agency, will provide home care services for Appellant at least two hours per day, five days per week; ██████████ will evaluate Appellant's need and eligibility for outpatient rehabilitation and any additional services. (Ex 3; Ex 6; T Davis, James, Bowen, Whyte)

6. Appellant has remained at Triboro 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, her condition is stable, her medical conditions can be treated in the community, and discharge to Appellant's home, with services, is a safe and appropriate discharge plan for Appellant.

Appellant wishes to remain in the Facility to receive additional occupational therapy. Despite both Respondent's and Appellant's insurance carrier's determination that Appellant no

[REDACTED] Triboro

longer requires skilled services, Appellant believes that she has not reached her potential in part because she feels she did not receive the proper OT for her condition; Respondent has proven that the OT provided enabled Appellant to reach her potential.

Respondent has proven that Appellant's health has improved sufficiently that she no longer requires skilled care and that returning to her home in the community with services is appropriate for Appellant at this time.

DECISION

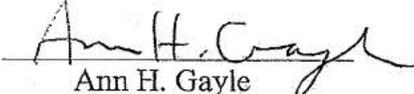
I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Triboro Center for Rehabilitation, is authorized to discharge Appellant, [REDACTED], in accordance with its [REDACTED] 2018 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
May 7, 2018


Ann H. Gayle
Administrative Law Judge

TO: Sharmin Foster
Director of Social Work
Triboro Center for Rehabilitation
1160 Teller Avenue
Bronx, New York 10456

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