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Department of Health

ANDREW M. CUOMO
Governor

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

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

December 29, 2020

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Suffolk Center for Rehabilitation & Nursing
25 Schoenfeld Boulevard
Patchogue, New York 11772

Emily Koplar
Suffolk Center for Rehabilitation & Nursing
25 Schoenfeld Boulevard
Patchogue, New York 11772

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 :
: **Suffolk Center for Rehabilitation and Nursing,** :
: Respondent, :
: to discharge her from a residential health care facility. :
:

COPY

DECISION

Hearing Before: Ann H. Gayle
Administrative Law Judge

Held: Via Cisco Webex

Hearing Date: November 20, 2020; record closed December 15, 2020

Parties: Suffolk Center for Rehabilitation and Nursing
By: Emily Koplak, Social Worker

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 Suffolk Center for Rehabilitation and Nursing (“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(i). Respondent determined to discharge ██████████ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(i)(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 §415.3(i)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

A transcript (pages 1-84) of the hearing was made part of the record. Appellant testified on her own behalf. ██████████ from the Recreation Unit assisted Appellant with technology at the hearing. Social Worker Emily Koplak, Attending Physician Chantale Vante, and Rehabilitation Director Melissa Springer testified for Respondent.

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

ALJ

I: Notice of Hearing with attached Notice of Discharge/Transfer

Facility:

1: Progress notes, rehab discharge summaries, and discharge notice

Appellant was given the opportunity but did not offer any documents at the hearing.

ISSUE

Has Suffolk Center for Rehabilitation and Nursing established that the discharge is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to transcript pages (“T”) and exhibits (“Ex”).

1. Respondent, Suffolk Center for Rehabilitation and Nursing, is a residential health care facility located in Patchogue, New York. (Ex I, Ex 1)
2. Appellant, █, age █ was admitted to the Facility on █ 2019 for short-term care. Appellant received PT/OT (physical and occupational therapies) from █ to █ 2019 when she reached her maximum potential in each discipline. A reassessment on █ 2020 revealed that Appellant is completely independent in all her ADLs (activities of daily living); she does not require skilled services; and she ambulates independently with a rolling walker. (Ex 1; T 21, 47-50, 52-54)
3. By notice dated █, 2020, Respondent advised Appellant that it had determined to discharge her on the grounds that her health has improved sufficiently so she no longer needs the services provided by the Facility. Respondent proposes to discharge Appellant to the █ (“Motel”) located at █ (Ex I; Ex 1)
4. Appellant previously resided in motels. It is the professional opinion of Appellant’s caregivers at the Facility that discharge to the community, including the Motel, is appropriate for

Appellant who is independent in her ADLs and capable of managing her medications and medical treatment in the community. (Ex 1; T 19-21, 26-27, 29-30, 32-34, 64-66, 69-71)

5. Upon discharge, Respondent will provide Appellant with a rolling walker, medications and prescriptions, medical appointments, and transportation to the Motel. DSS (Department of Social Services) will provide assistance for permanent housing, food stamps, and other needed services. (Ex 1; T 39-40, 43, 61-64, 71-74, 79-80)

6. Appellant has remained at the Facility pending the outcome of this proceeding.

DISCUSSION

The evidence presented by Respondent demonstrated that: Appellant is independent with her ADLs; she no longer requires skilled care; her chronic and acute medical conditions are stable and can be treated in the community; she is capable of managing her health care needs; she ambulates independently with a rolling walker; and discharge to the Motel is an appropriate discharge location for Appellant. Ms. Kopljar testified that the Motel was identified as a last resort because Appellant declined referrals to assisted living facilities. Appellant remains on wait lists for permanent housing with ██████████ ██████████ and ██████████, but the timeframe is uncertain. DSS will provide assistance with securing housing and other services in the community.

Appellant testified that for several years, prior to her admission to the Facility, she was in a revolving door situation wherein she has resided in a motel, needed hospitalization, was transferred from the hospital to a skilled facility, discharged to a motel, re-hospitalized and transferred to another skilled facility, back to a motel, etc., etc. Appellant is concerned that discharge to a motel at this time would lead to that same cycle repeating itself. Appellant further testified that she has difficulty with mobility and balance, and that she has had difficulty getting meals in the community. Ms. Springer testified that Appellant can ambulate independently, and

██████████/Suffolk Center

that she uses her rolling walker more for carrying supplies than for walking assistance. Ms. Kopljar testified that DSS will assist Appellant in the community with securing housing, food stamps and other needed services.

CONCLUSION

Respondent has proven that Appellant's health has improved sufficiently that she no longer requires skilled care, and that discharge to the Motel with DSS services is appropriate for Appellant at this time.

DECISION

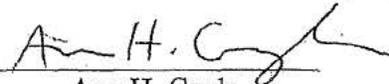
I find that the Facility has proved by substantial evidence that the discharge is necessary and the discharge location is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Suffolk Center for Rehabilitation and Nursing, is authorized to discharge Appellant in accordance with the ██████████ 2020 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
December 29, 2020


Ann H. Gayle
Administrative Law Judge

TO: ██████████
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25 Schoenfeld Bouevara.
Patchogue, New York 11772

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