



Department of Health

ANDREW M. CUOMO
Governor

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

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

January 24, 2017

CERTIFIED MAIL/RETURN RECEIPT

Jennifer Molina, DSW
Fordham Nursing and Rehabilitation Ctr.
2678 Kingsbridge Terrace
Bronx, NY 10463

[REDACTED], Resident
c/o Fordham Nursing and Rehabilitation Ctr.
2678 Kingsbridge Terrace
Bronx, NY 10463

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:mw
Enclosure

COPY

STATE OF NEW YORK : DEPARTMENT OF HEALTH

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

The Fordham Nursing and Rehabilitation Center ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED], 2017, to [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On February 15, 2017, a hearing was held before WILLIAM J. LYNCH, ESQ., ADMINISTRATIVE LAW JUDGE.

The hearing was held in accordance with the Public Health Law of the State of New York; Part 415 in 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"); the New York State Administrative Procedure Act ("SAPA"); and 10 NYCRR Part 51.

Evidence was received and witnesses were examined. An audio recording of the proceeding was made. The hearing was held at the Facility located at 2678 Kingsbridge Terrace, Bronx, New York. The

following individuals were present for the hearing: [REDACTED] Resident; Liana Rutenberg, Administrator, Purnima Badhla, Physical Therapist; Johanna Romano, Occupational Therapist; Duntan Pulle, M.D.; Michael Tise, Director of Social Services; Jennifer Molina, Social Worker; Brenda-Slater Brown, R.N., Director of Nursing.

STATEMENT OF THE CASE

The Facility made a determination to discharge the Resident effective [REDACTED] 2017. The stated reason for the discharge was that the Resident's health had improved sufficiently so that he no longer required the services provided by a skilled nursing facility. The proposed discharge location was a shelter operated by [REDACTED]. The Resident filed a timely request for an appeal of the discharge decision and has remained in the Facility pending this determination.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether the Facility has established a basis which permits the Resident's discharge from the Facility and whether the proposed discharge plan is appropriate. The Facility has the burden of proving its

case by substantial evidence (10 NYCRR § 415.3[h][2][iii], SAPA § 306[1]).

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 testimony or exhibits. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. The Resident is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2016, for short-term rehabilitation and treatment of a surgical wound on his [REDACTED]. (Facility Ex. 2; Recording @ 16:20).

2. The Resident completed a course of [REDACTED] treatment as prescribed, and his surgical wound has healed. (Facility Ex. 2; Recording @ 3:15).

3. The Resident received physical and occupational therapies. (Facility Ex. 3, 4).

4. The Resident can ambulate independently with a [REDACTED] walker and is able to perform all activities of daily living. (Recording @ 7:00, 10:15).

5. The Facility's interdisciplinary care team determined that the Resident no longer required skilled nursing services and could safely be discharged to a shelter. (Facility Ex. 2).

6. The Resident's attending physician determined that the Resident was medically stable for discharge. (Facility Ex. 5).

7. On [REDACTED] [REDACTED] 2017, the Facility issued a discharge notice to the Resident. (Respondent Ex. 1; Recording @ 16:40).

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]). 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 Resident previously resided in a shelter on [REDACTED], and he does not want to return to a shelter. He is concerned that he will have further problems with his [REDACTED] if he is required to [REDACTED] for follow-up appointments.

The Facility established the Resident currently has no other housing alternative available and that he is eligible to receive

transportation through Medicaid for his medical appointments in the community. The Facility social workers stated that they have previously had positive experience with residents discharged to [REDACTED] which has staff to provide case management and assistance in identifying permanent housing. The discharge plan described by the Facility included transportation to the shelter and a supply of medications which will allow time for the Resident to see a physician in the community. The Facility has also scheduled follow-up [REDACTED] [REDACTED] and dental appointments for the Resident. Prior to his discharge, the Facility agreed to advise [REDACTED] of the Resident's medical needs and to ensure that the Resident is able to arrange transportation for his medical appointments.

Based upon the evidence produced at the hearing, I find that the Resident no longer needs a skilled nursing facility placement, and that he is able to obtain any required follow-up medical care in the community. Therefore, the Facility has established a permissible basis for the Resident's discharge and that the discharge plan is appropriate.


DECISION AND ORDER

1. The Facility is authorized to discharge the Resident in accordance with its discharge plan on or after [REDACTED] [REDACTED] [REDACTED] 2017.

2. This decision shall be effective upon service on the parties by facsimile transmission, personal service or by certified or registered mail.

3. 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
February 22, 2017


WILLIAM J. LYNCH
Administrative Law Judge