



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

April 14, 2017

CERTIFIED MAIL/RETURN RECEIPT

Paul Mullman, DSW
Quantum Rehab. & Nursing Center
63 Oakcrest Avenue
Middle Island, New York 11953

[REDACTED], Resident
c/o Quantum Rehab. & Nursing Center
63 Oakcrest Avenue
Middle Island, New York 11953


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

In the Matter of an Appeal, pursuant to
10 NYCRR § 415.3, by

[REDACTED]

Appellant,

from a determination by

QUANTUM REHABILITATION AND NURSING CENTER
(FORMERLY LAKEVIEW REHABILITATION
AND CARE CENTER)

Respondent,

to discharge him from a residential health
care facility

DECISION

The Quantum Rehabilitation and Nursing Center ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED] [REDACTED] 2017, to [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On April 12, 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 63 Oakcrest Avenue, Middle Island, New York. The following individuals were present for the hearing: Phil Paskowitz, Ombudsman; Paul Mullman, Director of Social Work, and Kathleen Flannigan, R.N., Associate 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 the [REDACTED] [REDACTED] Department of Social Services, [REDACTED] [REDACTED]. The Resident filed a timely request for an appeal of the discharge decision, and a hearing was scheduled for March 28, 2017. The Resident requested an adjournment of the hearing to obtain representation. The request was granted, and the hearing was adjourned to April 12, 2017. The Resident requested a further adjournment of the hearing, and the request was denied. The Resident refused to attend the hearing, and the hearing proceeded as scheduled in his absence.

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 [REDACTED]-term rehabilitation to treat [REDACTED] [REDACTED] [REDACTED]. (Facility Ex. 7; Recording @ 2:45).

2. The Resident completed a course of physical therapy on [REDACTED], 2017. (Facility Ex. 7; Recording @ 3:15).

3. The Resident is independent with all activities of daily living. He ambulates in the building without assistance and leaves the building independently on pass several times a week. (Facility Ex. 7, 8; Recording @ 3:45).

4. 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. 8; Recording @ 5:00).

5. The Resident's attending physician determined that the Resident was medically stable for discharge. (Facility Ex. 2; Recording @ 5:30).

6. On [REDACTED] 2017, the Facility issued a discharge notice to the Resident. (ALJ Ex. 1; Recording @ 5:00).

7. A hearing on the Resident's appeal was scheduled for March 28, 2017. (ALJ Ex. 2).

8. At the Resident's request, the hearing was adjourned to April 12, 2017. (ALJ Ex. 2, 3).

9. The Resident requested a further adjournment of the hearing, but the request was denied. (ALJ Ex. 4, 5).

10. The Resident refused to attend the hearing on April 12, 2017, claiming he was "[REDACTED]." (Facility Ex. 6; Recording @ 1:45).

11. Jason Meyer, N.P., assessed the Resident and recorded in the Resident's medical record that there was no contraindication for the Resident to attend the April 12, 2017 hearing. (Facility Ex. 6).

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 Facility proposed to discharge the Resident to a shelter and established that the Resident currently has no other housing alternative available. The discharge plan is to provide the Suffolk County Department of Social Services with 48-hour advance notice of the Resident's discharge and to provide the Resident with transportation to the shelter, a 14-day supply of his medications as well as a prescription for a further 30-day supply of his medications.

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] 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
April 14, 2017**



WILLIAM J. LYNCH
Administrative Law Judge