



Department of Health

ANDREW M. CUOMO
Governor

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

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

June 19, 2017

CERTIFIED MAIL/RETURN RECEIPT

Anne Weisbrod, Asst. Director of Social Work
Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Riverdale, New York 10471

[REDACTED], Resident
c/o Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Riverdale, New York 10471

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: nm
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

Hebrew Home for the Aged at Riverdale,

Respondent,

to discharge her from a residential health care facility.

COPY

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Riverdale, New York 10471

Hearing Date:

June 7, 2017

Parties:

Hebrew Home for the Aged at Riverdale
By: Anne Weisbrod
Assistant Director of Social Services

[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 Hebrew Home for the Aged at Riverdale (“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 [REDACTED] (“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 and transferred to a compact disc (“CD”); the CD has become part of the record. Appellant testified for Appellant, and the following Facility representatives testified for Respondent: Anne Weisbrod—Assistant Director of Social Work, Zachary Palace, MD—Medical Director, and Sharon Praigrod—Clinical Nurse Manager.

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

ALJ:

- I: Notice of Hearing with the Facility's Discharge Notice attached

Facility:

- 1: Housing referrals
- 2: Progress notes

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

ISSUE

Has Hebrew Home for the Aged at Riverdale 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, Hebrew Home for the Aged at Riverdale ("Hebrew Home"), is a residential health care facility located in Riverdale, New York. (Ex I)

2. Appellant, ██████████, age ██████ was admitted to the Facility from ██████████ Hospital on ██████████, 2016 for ██████-term rehabilitation following ██████ surgery. Appellant completed occupational and physical therapy, and her condition is stable. Appellant has physicians in the community, and her medical conditions can be treated in the community. (T Weisbrod, Palace, Appellant,)

3. By notice dated ██████████, 2017, 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 the ██████████ ("Shelter") located at ██████████, ██████████. (Ex I)

5. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's medical director, that discharge to the community, including the Shelter, is appropriate for Appellant. Appellant will be discharged with a wheelchair, a ██████████ a medical discharge summary, prescriptions for medications and any remaining medications. Respondent will provide Appellant with transportation to the Shelter. The Shelter will provide Appellant assistance with securing permanent housing. (T Weisbrod)

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

DISCUSSION

Appellant agrees with Respondent's determination that she no longer requires skilled care. With such acknowledgement by Appellant, the only issue left to decide is whether the discharge location, *i.e.*, the Shelter is an appropriate discharge plan.

Appellant found the Facility's timing of telling her on the day after ██████████ that she would be discharged to the Shelter to be hurtful. Appellant testified that she does not want to go to the Shelter because she does not believe ██████████” Appellant expressed that she will not go to the Shelter, but she did not reveal where she would go if her appeal is not granted.

Ms. Weisbrod testified that discharge planning consisted of exploring with Appellant the possibility of residing with family members, including her ██████████ with whom she resided prior to her admission to the Facility. Unfortunately, neither her ██████████ nor other family members' homes are options for her at this time. Private and public housing, adult homes, and assisted living facilities were also explored as options, but Appellant was not interested in an adult home or assisted living facility. Although Appellant would like to live independently in a setting where she can cook her own meals and possibly take care of ██████████, she followed up with only

██████████ / Hebrew Home

some, but not all, of the housing applications presented to her. The Shelter was identified as a last resort.

CONCLUSION

Appellant has agreed that her health has improved sufficiently so that she no longer needs the services provided by the facility, and Respondent has proven that the Shelter is an appropriate discharge plan. As such, this case will be resolved in favor of Respondent as sufficient improvement of health is an explicitly authorized reason for discharge, and Respondent has identified an appropriate discharge location.

DECISION

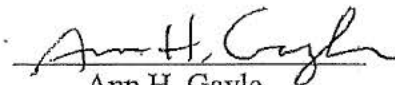
I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant, ██████████, is therefore DENIED.

Respondent, Hebrew Home for the Aged at Riverdale, is authorized to discharge Appellant in accordance with its ██████████ 2017 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: Menands, New York
June 16, 2017


Ann H. Gayle
Administrative Law Judge

TO: Anne Weisbrod, Assistant Director of Social Work
Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Riverdale, New York 10471

██████████
c/o Hebrew Home for the Aged at Riverdale
5901 Palisade Avenue
Riverdale, New York 10471