



Department of Health

ANDREW M. CUOMO
Governor

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

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

July 11, 2017

CERTIFIED MAIL/RETURN RECEIPT

RE: In the Matter of [REDACTED] – Discharge Appeal

Dear Parties:

[REDACTED]
Kingsbrook Jewish Medical Center
585 Schenectady Avenue
Brooklyn, New York 11203

Ahron Steinberg, Administrator
Holliswood Center for Rehab & Health
195-44 Woodhull Avenue
Hollis, New York 11423

Stephen Obeirne, M.D.
Director of Psychiatry
Kingsbrook Jewish Medical Center
585 Schenectady Avenue
Brooklyn, New York 11203

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: [Handwritten initials]
Enclosure

COPY

STATE OF NEW YORK: DEPARTMENT OF HEALTH

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

██████████
the Resident,

from a determination by

**HOLLISWOOD CENTER FOR
REHABILITATION AND HEALTH,**
the Facility,

to transfer/discharge him from a residential health care facility.

DECISION

AND

ORDER

██████████ (“Resident”) was transferred to the Kingsbrook Jewish Medical Center (“KJMC”) on ██████████, 2017, by the Holliswood Center for Rehabilitation and Health (“Facility”). (Ex. 2) The Resident appealed the Facility’s decision to transfer/discharge him after his transfer. On July 3, 2017, a hearing on the appeal was held before Denise Lepicier, Administrative Law Judge (“ALJ”).

The Facility was represented by Ahron Steinberg, the Nursing Home Administrator. The Resident was not present at the hearing due to his ██████████ but was represented by his hospital attending psychiatrist and the hospital Chief of Psychiatry.

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

Evidence was received. Witnesses were sworn or affirmed, and examined. A transcript was made of the proceedings. The post-discharge hearing was held at the Kingsbrook Jewish Medical Center, 585 Schenectady Avenue, Brooklyn, New York 11203.

The following individuals were present at the hearing on July 3, 2017: Ahron Steinberg, Facility Administrator; Michele Rivera, Facility Admissions Director; James Wolberg, M.D., Chair of Psychiatry; Thulasiram Janardhanan, M.D., psychiatric attending; Sheina Wilhelm, hospital social worker; Mary George, medical student; Steven Han, medical student. The following documents were admitted into evidence at the hearing:

ALJ Exhibit I – Letter, Notice of Hearing, and Facility letter of refusal of re-admittance;
Facility Exhibit 1 – Resident’s medical record face sheet from the Facility;
Facility Exhibit 2 – Facility’s letter refusing to readmit Resident dated [REDACTED]/2017.

STATEMENT OF ISSUES

The Facility transferred the Resident to the KJMC on or about [REDACTED] 2017, due to the Resident’s [REDACTED] behavior towards another resident. After admission to the hospital, it was discovered that the Resident had [REDACTED]. Upon learning of the additional diagnosis of [REDACTED] and the hospital’s recommendation of one-to-one supervision in the Facility, the Facility refused to readmit the Resident. The issue to be determined here is whether the Facility may refuse readmission in such circumstances.

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

1. The Resident, a male, age [REDACTED] according to Facility records, suffering from [REDACTED] [REDACTED] [REDACTED] [REDACTED] of the [REDACTED], was initially admitted to the Facility on [REDACTED]

2015. (Ex. 1)

2. The Resident was transferred to KJMC for [REDACTED] behavior towards another resident on [REDACTED], 2017. (Testimony of Ahron Steinberg; Fac. Ex. 1)

3. About a week after the Resident's admission to KJMC, the Facility learned that the Resident had [REDACTED] [REDACTED] apparently while residing at the Facility and now carried a diagnosis of [REDACTED]. The hospital staff was recommending one-on-one supervision of the Resident upon his return to the Facility. (Testimony of Ahron Steinberg)

4. The Facility concedes that it has refused to readmit the Resident because of the recent diagnosis of [REDACTED]. The Facility feels that even with one-to-one supervision the Resident could manage to acquire some [REDACTED]. (Testimony of Ahron Steinberg; Ex. 2)

5. The Resident's treatment at the hospital has progressed since the initial diagnosis of [REDACTED] and the Resident also now has a diagnosis of [REDACTED]. The Resident is being treated both with [REDACTED] medication for his [REDACTED] and [REDACTED] [REDACTED] medication for his [REDACTED] and his condition has improved on low doses of both medications. (Testimony of James Wolberg, M.D.; testimony of Thulasiram Janardhanan, M.D.)

6. The Resident recently attended a picnic at KJMC for patients and made no attempt to [REDACTED] anything unusual and demonstrated no behavior indicating that he wanted to do so. (Testimony of James Wolberg, M.D.; testimony of Thulasiram Janardhanan, M.D.)

CONCLUSION

Nothing in the regulations controlling transfers or discharges from nursing homes relieves the nursing home facility of the obligation to readmit a prior Resident that it transferred to a hospital for acute care. The Facility in this matter apparently intended to take this Resident back after he was stabilized for his [REDACTED] behavior. The Resident lives in the Facility on a "behavioral unit," a unit intended to deal with residents with problematic behaviors. He lived there for more than a [REDACTED]

The Facility indicates that it had no knowledge of this Resident's [REDACTED] diagnosis and that this diagnosis makes the Resident too big a risk for the Facility to care for. However, the Resident is the Facility's responsibility. If the Facility feels it has grounds to discharge the Resident, the Facility must comply with Section 415.3 of Title 10 of the New York Code of Rules and Regulations which specifies nursing home residents' rights. 10 NYCRR § 415.3(h) of this section specifically outlines each resident's transfer and discharge rights. Moreover, the Facility has the obligation to do discharge planning to find an appropriate placement for the Resident. A hospital is never an appropriate discharge placement as a hospital is only for acute care.

At this point in time, discharge may not be necessary. The Resident's [REDACTED] has decreased. He is exhibiting no symptoms of [REDACTED] at this time. The hospital has indicated its willingness to follow the Resident in its [REDACTED] clinics and to assist the Facility in its care for this Resident. The hospital has indicated that the Resident is ready for discharge back to the Facility.

The Facility must readmit the Resident, prior to admitting any other person, to the next available bed at the Facility. 10 NYCRR §§ 415.3(h)(2)(i)(d). If the Facility does not have a

bed in an appropriate unit (e.g., a “behavioral unit”), it must admit the Resident to the first available bed at the Facility and provide the staff to keep the Resident and others at the Facility safe.

ORDER

1. The Appeal by the Resident, [REDACTED], is **GRANTED**; and
2. The Facility must readmit the Resident to the next available bed at the Facility and provide appropriate staffing for the safety of all; and
3. This Order may be appealed to a court of competent jurisdiction pursuant to the New York Civil Practice Law and Rules; and
4. This Order shall be effective on service on the parties by certified or registered mail.

DATED: New York, New York
July 10, 2017



Denise Lepicier
Administrative Law Judge