



Department of Health

ANDREW M. CUOMO
Governor

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

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

September 29, 2017

CERTIFIED MAIL/RETURN RECEIPT

Ruth Katz, Director of Social Worker
Resort Nursing Home
430 Beach 68th Street
Arverne, New York 11692

██████████
c/o Resort Nursing Home
430 Beach 68th Street
Arverne, New York 11692

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: ISM
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

RESORT NURSING HOME,

Respondent,

to discharge her from a residential health care facility.

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Resort Nursing Home
430 Beach 68th Street
Arverne, New York 11692

Hearing Date:

September 20, 2017

Parties:

Resort Nursing Home
By: Ruth Katz
Director of Social Work

[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 Resort Nursing Home (“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 █ (“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 appeared and testified on █ own behalf. Ruth Katz—Director of Social Work testified for Respondent. The following Facility representatives were also present at the hearing: Michael Weiss— Director of Rehabilitation, Grace Natindim— Director of Nursing, and Kristina Gatbonton—MDS Coordinator.

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

ALJ:

- I: Notice of Hearing and attached Facility Discharge Notice
- II: █, 2017 letter

Facility:

- 1: █, 2017 letter
- 2: MARS – Medications for month of █ 2017
- 3: Nurse Supervisor note
- 4: Social Services referrals
- 5: Social Services progress notes
- 6: Rehabilitation discharge summary █
- 7: Care Plan

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

ISSUE

Has Resort Nursing Home 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, Resort Nursing Home, is a residential health care facility located in Arverne, New York. (Ex I)
2. Appellant, █, age █, was admitted to the Facility on █, 2016. Appellant completed rehabilitation, █ is very independent, and █ condition is stable. Appellant’s medical conditions can be treated in the community. (T Katz, Appellant)
3. By notice dated █, 2017, Respondent advised Appellant that it had determined to discharge █ on the grounds that █ health has improved sufficiently so that █ no longer needs the services provided by the Facility. (Ex I)
4. Respondent’s discharge plan is to transfer/discharge Appellant to the █ Shelter (“Shelter”) located at █, █. (Ex I)

5. It is the professional opinion of Appellant's caregivers at the Facility, including Appellant's Facility physician, that discharge to the community, including the Shelter, is appropriate for Appellant. The Shelter will provide Appellant assistance with seeking permanent housing and █ other needs. Appellant will be discharged with █ █, prescriptions for █ medications, follow-up appointments with █ physicians in the community, transportation to the Shelter, a letter requesting placement in █, and the balance of Appellant's funds currently in █ account in the Facility (such funds will be given to Appellant by check or cash). (T Katz)
6. Appellant has remained at the Facility pending the outcome of this proceeding.

DISCUSSION

Appellant agrees with Respondent's determination that █ no longer requires skilled care and that █ medical care and treatment can be obtained in the community on an out-patient basis. With such acknowledgement by Appellant, the only issue left for this Decision is whether the discharge location, *i.e.*, the Shelter, is an appropriate discharge plan.

Appellant and Respondent worked together to explore Assisted Living and Adult Home placement. Unfortunately, Appellant did not meet the age requirement for Assisted Living placement, and █ (an adult home) rejected █. The Parties agreed to continue to work together to find an Adult Home placement, but Appellant has been rejected because of alleged █. With Respondent's assistance, Appellant also applied for housing through the Section Q/Waiver Program, but it can take years to obtain approval and housing. The Shelter was identified as a last resort.

Appellant testified that █ was not satisfied with the manner in which Respondent handled █ discharge planning. Appellant would like to remain in the Facility until █ has permanent independent community housing or placement in an Adult Home, and █ indicated

█ / Resort

that █ would not go to the Shelter, but Appellant did not state where █ would go if the Shelter is the only option available to █.

Sufficient improvement of health is an explicitly authorized reason for discharge. Appellant has agreed that █ health has improved sufficiently so that █ no longer needs the services provided by the facility, and Respondent has proven that the Shelter is an appropriate discharge plan.

DECISION

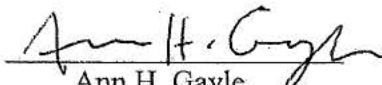
I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Resort Nursing Home, 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: New York, New York
September 29, 2017


Ann H. Gayle
Administrative Law Judge

TO: Ruth Katz, Director of Social Work
Resort Nursing Home
430 Beach 68th Street
Arverne, New York 11692

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