



Department of Health

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Governor

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

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

October 2, 2017

CERTIFIED MAIL/RETURN RECEIPT

██████████
2130 Madison Avenue- Apt. ██████
New York, New York 10037

Nadia Gittens, Director of Social Work
Williamsbridge Manor
1540 Tomlinson Avenue
Bronx, New York 10461

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

██████████ Appellant,

from a determination by

WILLIAMSBRIDGE MANOR, Respondent,

to discharge him from a residential health care facility.

DECISION

A Notice of Transfer/Discharge, dated ██████████ 2017, was issued to ██████████, Appellant (“Resident”) by Williamsbridge Manor, Respondent (“Facility”) [ALJ Ex. 1]. The Facility determined that the health of the Resident has improved sufficiently so that she no longer requires the services provided by the Facility, 10 NYCRR §415.3(h)(1)(i)(a)(2). The Resident appealed the Facility’s proposed transfer/discharge. The pre-transfer hearing was held on September 15, 2017, at the Facility, 1540 Tomlinson Avenue, Bronx, New York, before Kimberly A. O’Brien, Esq., Administrative Law Judge (“ALJ”).

The Facility was represented by Nadia Gittens, Director of Social Work. The Appellant appeared in person and testified on her own behalf. 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 United States Code of Federal Regulations (“CFR”) 42 CFR Subpart E (§§431.200 - 431.246) and 42 CFR Part 483; the New York State Administrative Procedure Act; and 10 NYCRR Part 51.

Evidence was received including: ALJ Exhibit 1 (“ALJ Ex.1”) – Notice of Hearing & August 14, 2017 Notice of Transfer/ Discharge; and Facility Exhibit 1 (“Ex. 1”) – Resident Face Sheet, Plan of Care Summary, Social Work Progress Notes, Clinical Notes, Occupational Therapy Notes & Discharge Summary, Physical Therapy Notes & Discharge Summary, and Physician Progress Notes. Witnesses were sworn or affirmed and examined. A digital recording of the proceeding was made. The following individuals were present at the hearing: Nadia Gittens, Director of Social Work; Cheryl Harris, RN; Henry Heinemann, Administrator; [REDACTED] Resident; and [REDACTED], Resident/Appellant.

STATEMENT OF THE CASE

The Facility determined that the health of the Resident has improved sufficiently so that she no longer requires the services provided by the Facility and to discharge the Resident from the Facility to her apartment, effective August 15, 2017 [ALJ Ex. 1]. Pursuant to 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer/discharge is necessary and the discharge plan is appropriate. The Resident is aware of the Facility’s assertions and made a timely request for a hearing to appeal her discharge. The Resident remained at the Facility pending the outcome of the hearing.

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 [REDACTED] year old female, was admitted to the Facility on [REDACTED], 2017 for post-surgery rehabilitation. Prior to admission, the Resident was hospitalized with [REDACTED]

██████████ with ██████████ and ██████████ and she had surgery including an ██████████ [Ex. 1 at p.1&2].

2. The Resident is alert and oriented and can make her own decisions. The Resident has completed her rehabilitation program. The Resident's surgical wounds have healed and she provides her own ██████████ care. The Resident ambulates with assistance of a ██████████ walker and is independent with all her Activities of Daily Living ("ADL's") including feeding, bathing, grooming, dressing and toileting. The Resident is scheduled to have surgery to close the ██████████ [Testimony of Ms. Gittens, Ms. Harris; Ex. 1 at p. 3, 5-14].

3. The Resident's physician and her care team have determined that her medical needs can be met in the community and discharge to her apartment is appropriate [Testimony of Ms. Gittens, Ms. Harris; Ex. 1 at p. 3 &14, ALJ Ex. 1].

DISCUSSION

The Resident was admitted to the Facility for a short term stay to receive post-surgery rehabilitation. The Resident testified that she has been feeling ██████████ and the cause has not been identified. She believes that she cannot use her walker at home because the space is small and cluttered. The Resident shares an apartment with her ██████████ and the Facility assumed that upon discharge the Resident's ██████████ could provide the Resident with assistance at home. During the pre-hearing discussion, the Resident made it clear to the Facility that her ██████████ cannot provide much assistance; her ██████████ has her own health issues and is often away from home. ██████████, a fellow resident, testified that he has witnessed the Resident have a ██████████. He believes that the Resident needs the care the Facility provides.

Ms. Gittens will document in the discharge planning notes that the Resident's ██████████ cannot provide much assistance to the Resident. Ms. Gittens will also contact an ██████████

approved home care agency. The home care agency will assess what assistance including nursing/home health services and assistive devices that the resident might require in the community.

The Resident is scheduled to have surgery to close the [REDACTED] (“surgery”) on [REDACTED], 2017, and she would like to remain at the Facility until she has the surgery. The surgery was originally scheduled for [REDACTED], however, it was postponed because the Resident had an [REDACTED] and she was receiving antibiotic therapy. As of [REDACTED], the Resident’s insurer, is no longer paying for the Resident’s stay at the Facility (“stay”).¹

It is undisputed that the surgery was rescheduled for [REDACTED] 2017. After the surgery, the Resident would like to return to the Facility to receive post-surgery rehabilitation services. Eventually, the Resident would like to return to her job in the community. At the time of the hearing, it was not clear whether the surgery would proceed on [REDACTED]. It was also not clear whether the Resident would require a post-surgery rehabilitation stay at the Facility, and, if so, whether [REDACTED] would provide coverage.

Based on the prehearing discussion and the testimony and evidence presented at the hearing, the ALJ ruled on the record that the Resident no longer requires the services provided by the Facility and discharge of the Resident to her apartment is appropriate. The Facility was

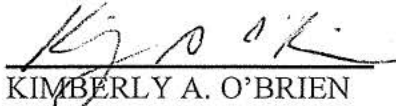
¹ While non-payment is not the Facility’s stated reason for discharge, on [REDACTED] [REDACTED] terminated coverage for the Resident’s stay. On [REDACTED], the Facility notified the Resident that [REDACTED] denied the Resident’s appeal to extend coverage for the Resident’s stay and that the Resident would be discharged on [REDACTED] 2017 [Ex.1 at p. 3, ALJ Ex.1]. The Facility made the Resident aware that after [REDACTED] the Facility must personally bill the Resident at the private pay rate, approximately \$ [REDACTED] a day. The Facility also provided the Resident with a Medicaid application and repeatedly offered assistance with filing the application [Ex. 1 at p. 4]. During the prehearing discussion, the Resident expressed discomfort with providing financial information to the Facility and stated that she will file the Medicaid application on her own.

authorized to discharge the Resident on or after [REDACTED], 2017, in accordance with its [REDACTED] 2017 Notice of Transfer/ Discharge.

ORDER

1. The Resident's appeal of her transfer/discharge is denied; and
2. On [REDACTED], 2017, the ALJ authorized the Facility to discharge the Resident on or after [REDACTED] 2017, in accordance with its [REDACTED], 2017 Notice of Transfer/ Discharge; 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.

DATED: Albany, New York
September 29, 2017


KIMBERLY A. O'BRIEN
Administrative Law Judge

To: [REDACTED]
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New York, NY 10037

Nadia Gittens, Director of Social Work
Williamsbridge Manor
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