



Department of Health

ANDREW M. CUOMO
Governor

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

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

February 23, 2018

CERTIFIED MAIL/RETURN RECEIPT

Eli Knoll, Administrator
Fieldstone Lodge
666 Kappock Street
Riverdale, New York 10463

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

Sheina Wilhelm
Kingsbrook Jewish Medical Center
585 Schenectady Avenue
Brooklyn, New York 11203

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 / cac
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
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

FIELDSTON LODGE NURSING
AND REHABILITATION CENTER

Respondent,

to discharge him from a residential
healthcare facility

COPY

DECISION
AND ORDER

-----X
On [REDACTED] 2018, Fieldston Lodge Nursing and
Rehabilitation Center ("the Facility") transferred [REDACTED]
("the Resident") to [REDACTED] Hospital for a [REDACTED] evaluation,
but he was cleared for return to the Facility that same night. On
[REDACTED] 2018, the Facility then sent the Resident to Kingsbrook
Jewish Medical Center ("the Hospital") for a [REDACTED]
evaluation, and the Hospital admitted the Resident. When the
medical staff at the Hospital determined that the Resident could
be discharged back to the Facility, the Facility refused to readmit
him. On [REDACTED] 2018, the Resident's representative, [REDACTED]
[REDACTED] contacted the New York State Health Department's
hotline to request the commencement of this appeal. On February
16, 2018, a hearing on the appeal was held before William J. Lynch,
Esq., Administrative Law Judge.
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The hearing was held in accordance with the Public Health Law of the State of New York; Part 415 of 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.

The hearing was held at the Hospital. Evidence was received, witnesses were sworn or affirmed and examined. An audio recording of the proceedings was made. The following individuals were present for the hearing: [REDACTED], the Resident's representative [REDACTED] the Resident's [REDACTED] Eli Knoll, the Facility's Administrator; Sheina Wilhelm, LCSW, the Hospital's Social Worker; Eileen Klein, Hospital Administrator for [REDACTED] Richard Hess, M.D., [REDACTED] at the Hospital; and James Wolberg, M.D., Chair of [REDACTED] at the Hospital.

At the conclusion of the hearing, the Administrative Law Judge rendered an oral decision and order on the record, requiring the Facility to readmit the Resident to the first available semi-private male bed, before admitting any other resident. This written decision confirms the oral decision and order made on February 16, 2018.

ISSUES

The issues to be determined in this proceeding are whether the Facility's discharge of the Resident was necessary and the discharge plan was appropriate. The Facility has the burden of proof and must prove 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 was admitted to the Facility located in the Bronx on [REDACTED], 2017. His diagnoses included [REDACTED]

[REDACTED]. He is [REDACTED] years of age.

(Facility Ex. 1).

2. On [REDACTED] 2018, the Resident entered the room of another resident. When the other resident told him to leave, the Resident "told her to [REDACTED]" The Facility transferred the Resident to [REDACTED] Hospital in the [REDACTED]

for a [REDACTED] evaluation, but he was returned to the Facility that night. (Facility Ex. 4).

3. On [REDACTED] 2018, the Resident got into a verbal altercation with another resident and became [REDACTED]

[REDACTED] The Facility then sent the Resident to Kingsbrook Jewish Medical Center in Brooklyn, and he was admitted to the [REDACTED] [REDACTED] Unit. (Facility Ex. 4).

4. The Resident's medications were adjusted while he was in the Hospital. When the Hospital's [REDACTED] cleared the Resident for discharge back to the nursing home, the Facility refused to readmit him. (Recording @ 3:00).

5. The Hospital provided the testimony of one its psychiatrists, Dr. Hess, who acknowledged that the Resident has [REDACTED] and a tendency to [REDACTED] but he stated that changes were made to the Resident's medications while in the Hospital and that the Resident should now return to the Facility. (Recording @ 3:00; 19:35, 22:00).

6. The Facility acknowledged that it never issued a discharge notice, and stated that it was continuing to refuse readmission, claiming that there had been [REDACTED] behavioral incidents and that the Facility did not have an appropriate unit for him. (Facility Ex. 3; Recording @ 10:20).

ANALYSIS AND CONCLUSIONS

Before a facility discharges a resident, it must notify the resident and the resident's designated representative of the discharge and the reasons for the move in writing. (10 NYCRR 415.3[h][1][iii]). In this instance, the Facility discharged the Resident, but never issued a discharge notice.

When a facility transfers a resident for any reason, the facility must also verbally inform and provide written information about the bed-hold policy to the resident and the designated representative. (10 NYCRR 415.3[h][3]). In this instance, the Facility did not inform the Resident or his designated representative of the bed-hold policy at the time of his transfer.

The Facility's administrator, Eli Knoll, claimed that he discharged the resident with no notice and refused to readmit the Resident based upon information given to the Facility's Director of Nursing when the [REDACTED], 2018 incident was reported to the Health Department. According to Mr. Knoll, the Department employee taking the report asked the Director of Nursing, "Why do you keep taking [the Resident] back," and told him that "you cannot put the other 199 residents at risk." When asked the name of the individual at the Health Department who allegedly told the Director of Nursing to refuse the Resident's readmission with no notice or appropriate

discharge plan, Mr. Knoll claimed the person did not give their name. (Recording @ 6:15).

Mr. Knoll claimed that he was waiting for the results of this hearing before readmitting the resident, but he was unable to provide any reasonable explanation for relying on information allegedly provided by some unnamed Department employee instead of complying with the Department's regulations related to a resident's discharge. Moreover, Mr. Knoll's suggestion that he was waiting for a hearing to determine whether he should readmit the Resident to the Facility was not credible because Mr. Knoll never gave the Resident or his representative the required notice which would have provided them with the information needed to request a hearing.

The Hospital's [REDACTED] Dr. Hess, explained that people with [REDACTED] can act [REDACTED] because they don't [REDACTED]

[REDACTED] He opined that the Resident's behaviors are not very different from the behaviors that other people with [REDACTED] can exhibit as they pass through certain stages, but these behaviors do no warrant hospitalization.

Based on the record in this proceeding, the Facility failed to establish that it issued a discharge notice. In addition, the record establishes that the Facility failed to inform the Resident of the bed-hold policy at the time of his admission to the


Hospital. Moreover, the record demonstrates that the Hospital adjusted the Resident's medications which improved his behaviors, and the Facility offered no evidence that the Resident requires continued hospitalization. Therefore, the Facility was required to readmit the Resident to the next available bed.

DECISION AND ORDER

1. This Decision confirms the oral decision made on the record on February 16, 2018, requiring the Facility to readmit the Resident to the first available semi-private male bed, prior to admitting any other person to the Facility;

2. 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
February 23, 2018**



WILLIAM J. LYNCH
Administrative Law Judge