



Department of Health

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Commissioner

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

March 8, 2018

CERTIFIED MAIL/RETURN RECEIPT

Lorraine Whyte, DSW
Triboro Center for Rehabilitation & Nursing
1160 Teller Avenue
Bronx, New York 10458

██████████ Appellant
Triboro Center for Rehabilitation & Nursing
1160 Teller Avenue
Bronx, New York 10458

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 / 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

██████████ Appellant,

from a determination by

TRIBORO CENTER FOR REHABILITATION & NURSING
Respondent,

to discharge him from a residential health care facility.

COPY

DECISION

A Discharge Notification, dated ██████████ 2018, was issued to ██████████
("Resident" or "Appellant") by Triboro Center for Rehabilitation & Nursing ("facility" or
"Respondent"). The Resident appealed the facility's proposed transfer/discharge. The pre-transfer
Hearing was held on March 5, 2018, at the facility, 1160 Teller Avenue, Bronx, New York, before
Kimberly A. O'Brien, Esq., Administrative Law Judge ("ALJ").¹

The Respondent appeared by Lorraine Whyte, Director of Social Services ("DSW"). The
Appellant appeared in person at the prehearing conference held immediately before the hearing
and spoke on his own behalf, but he did not appear at the hearing. 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

¹ The hearing was originally scheduled on February 3, 2018, but was adjourned because of weather (forecast snow, wind, flooding and power outages).

Regulations (“CFR”) 42 CFR Subpart E (§§431.200 - 431.246) and 42 CFR Part 483; and the New York State Administrative Procedure Act.

The following individuals were present at both the prehearing conference and the hearing: Lorraine Whyte, DSW; Chantal Bowen, Unit Nurse Supervisor; April James, Rehabilitation Director; and Shereen Davis, Resident’s Social Worker. Evidence was received, witnesses were sworn or affirmed and examined. A digital recording of the hearing was made. The documentary evidence includes: ALJ Ex. 1- Notice of Hearing & 2/19/18 Notice of Transfer/Discharge; Ex. 1 – Resident Admission/Face Sheet, Social Work Summary, Notice of Transfer/ Discharge, MD Order; Ex 1A – Weekly Wound Assessments; Ex. 1B – RN Narrative Assessments 1/17/18, 2/20/18, 3/1/18; Ex. 2 – Screening Form for Outreach Referral & Patient Review Instrument (PRI). The Resident was provided with a copy of the documentary evidence.

STATEMENT OF THE CASE

The facility’s Notice of Transfer/Discharge states that the “continued safety of individuals in the facility who would otherwise be endangered by your continued residency” and the “resident’s health has improved sufficiently” so that he “no longer needs services provided by the facility.” The facility proposes to discharge the Resident from the facility to the shelter [ALJ Ex. 1]. The Resident is aware of the facility’s assertions and appealed his discharge.

FINDINGS OF FACT

The following findings of fact were made after a review of the entire record in this matter. Citations in brackets refer to exhibits (Ex.) 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 male, was admitted to the facility on [REDACTED] 2017 for wound care and rehabilitation [Ex. 1 at p. 3].
2. The Resident is articulate, alert and oriented, and he can make his own decisions. The Resident is [REDACTED] and he ambulates with the assistance of a wheel chair. He is independent with all activities of daily living (ADL's) including transfers, feeding, bathing, grooming, dressing and toileting. The Resident regularly goes out on pass unescorted [Ex 1, 2; Testimony of Ms. Davis, Ms. James, Ms. Bowen].
3. The Resident's wounds are healed and he is no longer receiving therapy. On [REDACTED] [REDACTED] 2018, the Resident's physician, Janet Tufaro, documented that the Resident "is stable for discharge to a shelter" [Ex. 1 at 10, 1A; Testimony of Ms. James, Ms. Bowen].
4. The Resident has no identified source of income. The Resident has reapplied for Social Security Income (SSI) benefits, but it has not been reinstated. [Ex. 1, 2; Testimony of Ms. Davis].
5. The facility sent the Resident's PRI to other skilled nursing facilities (nursing homes) and to assisted living programs (ALPs), including those recommended by the Resident in his preferred location, [REDACTED]. The Resident was not accepted by the other nursing homes because he has no skilled needs and the ALPs would not accept him for many reasons including lack of income, [REDACTED] [REDACTED] [Ex. 1, 2; Testimony of Ms. Davis].
6. The facility contacted [REDACTED] Shelter [REDACTED] to arrange for the Resident's proposed transfer/ discharge and inquired about whether the Resident could be accepted into a shelter in [REDACTED]. [REDACTED] informed the facility that the Resident has a designated shelter in the [REDACTED] and that the Resident cannot be transferred to another

shelter until he has resided at [REDACTED] for a total of one year. The facility informed the Resident that the proposed transfer/discharge is specifically to [REDACTED] (the shelter) [Testimony of Ms. Davis; ALJ Ex. 1].

DISCUSSION

Prehearing Conference

Before going on the record, the ALJ explained the hearing process and conducted a lengthy discussion with the parties about the Resident's needs, the reasons for the proposed discharge, and the proposed discharge location. The Resident expressed frustration and dissatisfaction about his circumstances and the care he is receiving at the facility. He believes that he still needs the care the facility provides; but he would prefer to be transferred to a nursing home in [REDACTED]. He wants therapy so that he can [REDACTED]. The Therapy Director said that the Resident does not currently receive therapy because he is at his baseline function, and because he has been [REDACTED] for [REDACTED] years he will [REDACTED]. The Unit Nurse Supervisor said that the resident has no skilled needs at this time. The Social Worker said that the facility sent the Resident's PRI to other nursing homes and ALPs, but the resident was not accepted. The Resident would like to find an apartment in the community and is reapplying for SSI benefits, but he has been denied [REDACTED] because there was a [REDACTED]. He is appealing the determination; the facility provided him with a letter which states that he is a resident at the facility, his date of admission and his current medical condition. The Resident asked the facility to document that he is no longer under the [REDACTED] but the Social Worker made it clear that the facility cannot speak to the status of the [REDACTED]. The Resident said that he lived in shelters for [REDACTED] years, and he does not want to return [REDACTED] because he believes it is dangerous and the

conditions are unhealthy. He said that if he returns to [REDACTED] he will end up in the hospital. The Social Worker said that without income that is the only place available. The Resident said that the Social Worker did her job, but he believes the facility could help him if they wanted to. The DSW then raised concerns the facility had about the Resident's behavior including that he had been verbally [REDACTED] toward staff and other residents. At or about that point, the Resident became [REDACTED] and in a raised voice accused facility staff of lying and not providing him with appropriate care and services. He said he would not participate in the hearing and left the room. The Resident returned two more times, but he could not regain his composure to participate in the hearing.

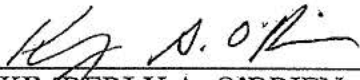
Hearing

The hearing proceeded without the Resident. The facility had the burden of proof and it was required to show that the Resident is a danger to others in the facility and/or the Resident no longer requires the services it provides; and that the shelter is available and appropriate to meet his needs [ALJ Ex. 1]. The facility failed to show that the Resident is a danger to others in the facility. Essentially, its evidence consisted of nursing notes that described two incidents where the Resident had heated verbal exchanges with other residents and staff [Ex. 1B]. The facility did not report the incidents to the police and it did not put added security measures in place to protect residents and staff from the Resident or suspend the Resident's out on pass privileges. In fact, the facility did not have security staff present at the hearing and the facility allowed the Resident to go out on pass when the hearing was taking place. The facility did, however, establish that the Resident is alert, oriented and independent with activities of daily living; that he no longer has skilled needs; and that the shelter is available and appropriate to meet his needs [FOF 2, 3, 5, and 6].

ORDER

1. The Appeal by the Resident, Ahmed Evans, of his transfer/discharge is **denied**;
and
2. The Facility may transfer/discharge the Resident to the shelter in accordance with this Decision and Order; 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
March 7, 2018



KIMBERLY A. O'BRIEN
Administrative Law Judge

Lorraine Whyte, Director of Social Services
Triboro Center for Rehabilitation & Nursing
1160 Teller Avenue
Bronx, New York 10458

██████████ Resident
C/o Lorraine Whyte, Director of Social Services
Triboro Center for Rehabilitation & Nursing
1160 Teller Avenue
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