



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

March 27, 2018

CERTIFIED MAIL/RETURN RECEIPT

Charles Light, Administrator
Bezalel Rehabilitation & Nursing Center
29-38 Far Rockaway Boulevard
Far Rockaway, New York 11691

[REDACTED]
C/o Bezalel Rehabilitation & Nursing Center
29-38 Far Rockaway Boulevard
Far Rockaway, New York 11691

[REDACTED]
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

**BEZALEL REHABILITATION
& NURSING CENTER,**

Respondent,

to discharge him from a residential health care facility.

COPY

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Bezalel Rehabilitation & Nursing Center
29-38 Far Rockaway Boulevard
Far Rockaway, New York 11691

Hearing Date:

March 21, 2018

Parties:

Bezalel Rehabilitation & Nursing Center
By: Charles Light, Administrator

By: [REDACTED]

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 Bezalel Rehabilitation & Nursing Center (“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 [REDACTED] 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. [REDACTED] and

[REDACTED] Appellant’s [REDACTED] testified for Appellant. The following Facility representatives testified for Respondent: Charles Light—Administrator, Zahava Nussbaum—Social Worker, and Nora Ong—Director of Nursing Services.

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

ALJ:

- 1: Notice of Hearing with the Facility’s Discharge Notice attached

Facility:

- 1: Social Services care plan assessment
- 2: Resident face sheet and physician orders
- 3: Summary statement of Resident’s condition and discharge planning
- 4: [REDACTED] evaluation
- 5: Social Services’ progress notes

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

ISSUE

Has Bezalel Rehabilitation & Nursing Center 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. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Respondent, Bezalel Rehabilitation & Nursing Center, is a residential health care facility located in Far Rockaway, New York. (Ex I)
2. Appellant, ag [REDACTED], was admitted to the Facility from [REDACTED] Medical Center more than eight years ago on [REDACTED], 2009. The reason for admission was “to prevent the progression” of Appellant’s primary diagnosis [REDACTED] (Ex 3). Appellant’s [REDACTED] has been described in various documents in his chart as [REDACTED]

[REDACTED]

Appellant is independent in some of his ADLs (activities of daily living) such as eating and bed

mobility, but he requires supervision in ADLs such as bathing, toileting, mobility, and transfers.

(Ex 2; Ex 3; Ex 4; T Light, Ong)

3. By notice dated ██████████ 2018, Respondent advised Appellant that it had determined to discharge him on the grounds that his health has improved sufficiently so that he no longer needs the services provided by the Facility. (Ex I)

4. Respondent's discharge plan is to transfer Appellant to ██████████ Center,¹ an assisted living facility. (Ex I)

5. It is the professional opinion of Appellant's caregivers at the Facility that discharge to the community, including an assisted living facility, is appropriate for Appellant. (T Light, Ong, Nussbaum)

6. Appellant has remained at Bezalel Rehabilitation & Nursing Center pending the outcome of this proceeding.

DISCUSSION

Despite the Quarterly Social Service Care Plan Assessment ("Quarterly Assessment"), created on ██████████ 2018, which concluded "D/C [discharge] back to community not feasible at this time" (Ex 1, page 3 of 3), Respondent served Appellant with a Transfer/Discharge Notice on ██████████ 2018, ██████████ week later) informing him of Respondent's plan to discharge him back to the community on the grounds that his health had improved sufficiently so that he no longer needed the Facility's services. This determination was made, in part, on Appellant's BIMS score of ██████████ in that Quarterly Assessment. Social Worker Joslyn Hernandez, who completed the Quarterly Assessment, did not testify, but Ms. Ong, who did testify at the hearing, conceded that a BIMS score could be affected by the time of day it is given, the subjectivity of

¹ No address was noted in the Transfer/Discharge Notice. (Ex I)

██████████ Bezalel

the person asking the questions, and other factors, such that Appellant's BIMS score of ██████████ could have been lower under different circumstances.

It was reported in a "summary statement of Resident's condition and discharge planning" that "Resident is a candidate for an adult home or an assisted living facility, as per primary MD and ██████████ (Ex 3), but the evidence before me did not support that conclusory statement. ██████████ Dr. Hersha Reddy' ██████████ 2018 progress note makes no mention of Appellant being a "candidate for an adult home or an assisted living facility." Dr. Reddy's note reads simply, "Pt [patient] has capacity to make discharge decision" (Ex 4), and Respondent did not present any documentation from Appellant's primary MD.

Appellant's family testified that they believe Appellant does require skilled care and that his health has not improved sufficiently to allow discharge to a lesser level of care in the community. Appellant's family believes that the supervision Appellant requires with his ADLs such as bathing, toileting, mobility, and transfers, which Respondent acknowledges, as well as his inability to dress himself appropriately, as Appellant's family demonstrated at the hearing, confirm that Appellant is in need of skilled care and not a candidate for a lesser level of care in the community. They do not believe that an assisted living facility ("ALF") such as ██████████ ██████████ Center is appropriate for Appellant. They are quite concerned that the greater independence that ALFs provide would place Appellant in danger of facing harm if he wanders from the ALF; they are especially concerned that he might not be able to find his way back.

Appellant's family is "actively involved" (Ex 1) in his care. Appellant's ██████████ ██████████ and his ██████████ ██████████ visit Appellant regularly and speak with him as often as daily. Their testimony demonstrated that they are very attuned to Appellant's functional and cognitive status, and that despite the fact that ██████████

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term memory problem,” and “ term memory problem” in the “Cognitive Status” section, and “Trouble concentrating” in the “Mood Status” section of the Quarterly Assessment (Ex 1) were not checked, these family members regularly observe all of the above when they speak with Appellant by phone and in person.

CONCLUSION

The evidence presented by Respondent failed to demonstrate that Appellant’s health has improved sufficiently so that he no longer needs the services provided by the Facility, and Respondent failed to demonstrate that a lesser level of care in the community is appropriate for Appellant. Appellant needs the supervision with his ADLs which the Facility provides, and the independence an ALF allows, particularly with regard to leaving at will, could place Appellant at risk of harm.

DECISION

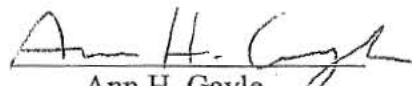
I find that the transfer is not necessary at this time, and the discharge plan is not appropriate.

The appeal by Appellant, [REDACTED] is therefore GRANTED.

Respondent, Bezalel Rehabilitation & Nursing Center, is not authorized to discharge Appellant, [REDACTED] in accordance with i [REDACTED] 2018 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
March 26, 2018


Ann H. Gayle
Administrative Law Judge

[REDACTED] /Bezalel

TO:

[REDACTED]
c/o Bezalel Rehabilitation & Nursing Center
29-38 Far Rockaway Boulevard
Far Rockaway, New York 11691

[REDACTED]

Charles Light, Administrator
Bezalel Rehabilitation & Nursing Center
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