



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

May 25, 2018

BY E-MAIL & CERTIFIED MAIL/RETURN RECEIPT

Merle John, DNS
Oceanview Nursing and Rehab
315 Beach 9th Street
Far Rockaway, New York 11691
mjohn@oceanviewnh.com

Eileen Klein, Social Worker
Kingsbrook Jewish Medical Center
585 Schenectady Avenue
Brooklyn, New York 11203
eklein@kingsbrook.org

[REDACTED]
c/o Kingsbrook Jewish Medical Center
585 Schenectady Avenue
Brooklyn, New York 11203
Hand Deliver by Eileen Klein, SW

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
Chief Administrative Law Judge
Bureau of Adjudication

JFH: NM
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

Oceanview Nursing and
Rehabilitation Center

Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION
AND
ORDER

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held at: Kingsbrook Jewish Medical Center
585 Schenectady Avenue
Brooklyn, NY 11203

Hearing Date: May 21, 2018

Parties: Oceanview Nursing and Rehabilitation Center
By: Annemarie Coombs, Administrator
315 Beach 9th Street
Far Rockaway, NY 11691

[REDACTED]

Pro Se

JURISDICTION

Oceanview Nursing and Rehabilitation Center (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge Selina Silva (the Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(h).

HEARING RECORD

- Facility witnesses: Annemarie Coombs, RN, Administrator
- Facility exhibits: 1-3
- Appellant witnesses: [Redacted] Appellant
 Vanessa Pearlman, LCSW, Kingsbrook Jewish Medical Center (Kingsbrook)
 Dr. David Edgcomb, Psychiatrist, Kingsbrook
 Dr. James Wolberg, Assistant Chair of Psychiatry, Kingsbrook
 Eshrak Awaz, Patient Care Director, Kingsbrook
 Eileen Klein, LCSW, Kingsbrook
- Appellant exhibits: None

The notice of hearing, discharge notice, and the accompanying cover letter were marked as ALJ Exhibit I. A transcript of the hearing was made.

ISSUES

Has Oceanview Nursing and Rehabilitation Center established that the Appellant's discharge was necessary and that the discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a [Redacted]-year-old female who was admitted to Oceanview Nursing and Rehabilitation Center on [Redacted] 2018 for treatment of an infection to a [Redacted] (Facility Exhibit 1.)
2. The Appellant's admitting diagnoses were: infection [Redacted]
 [Redacted] following surgery on the skin and [Redacted]

[REDACTED]
[REDACTED] (Facility Exhibit 1.)

3. On [REDACTED] 2018, Facility staff contacted the 911 emergency system to have the Appellant removed from the premises. The dispatched ambulance transported the Appellant, with her wheelchair and personal belongings, to Kingsbrook Jewish Medical Center (an acute care hospital) for evaluation. Upon receiving medical and [REDACTED] clearance for the Appellant's return to the Facility, the hospital contacted the Facility to arrange for her return. (Facility Exhibit 2.)

4. The Facility refused to readmit the Appellant and emailed Kingsbrook Social Worker Eileen Klein a discharge notice dated [REDACTED] 2018. The notice advised Kingsbrook that the Appellant was being discharged to Kingsbrook on [REDACTED] 2018 because "the safety or health of residents in the facility would be endangered, the risk to others is more than theoretical and all reasonable alternatives to transfer or discharge have been explored and have failed to address the problem." (Facility Exhibit 3.)

5. The Facility failed to provide the Appellant or her designated representative (her [REDACTED] with a discharge notice. (Facility Exhibit 2.)

6. On [REDACTED] 2018, Ms. Klein requested this hearing on the Appellant's behalf.

7. The Appellant remains at Kingsbrook pending the outcome of this appeal.

APPLICABLE LAW

A residential health care facility (also referred to in the regulations as a nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. PHL §§ 2801(2)-(3); 10 NYCRR § 415.2(k).

Department regulations at 10 NYCRR § 415.3(h)(1)(i) describe the permissible bases upon which a residential health care facility may transfer or discharge a resident. The residential health care facility must notify the resident and a designated representative, if any, of the transfer or discharge and the reasons for the move in writing. Such notice must be provided no later than the date on which a determination was made to transfer or discharge the resident. 10 NYCRR §§ 415.3(h)(1)(iii)-(iv).

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] 2018 after sustaining an infection to her [REDACTED] wound. She is diagnosed with multiple medical conditions, including [REDACTED] (Facility Exhibit 1.) On [REDACTED] 2018, Facility nursing staff contacted the 911 emergency system to have the Appellant taken to Kingsbrook for a [REDACTED] evaluation. The Appellant was transported to Kingsbrook with her wheelchair and all other personal belongings. (Facility Exhibit 2.) Kingsbrook medical staff determined that the Appellant did not require hospitalization. However, [REDACTED] was advised by Facility staff that the Appellant was not permitted to return. A Facility social worker subsequently emailed [REDACTED] a discharge notice dated [REDACTED] 2018 which confirmed that the Appellant was being discharged to Kingsbrook. (Facility Exhibits 2 and 3.)

The Facility was required to advise the Appellant and her [REDACTED] (the Appellant's designated representative pursuant to 10 NYCRR § 415.2(f)) in writing that the Appellant was being discharged, and the reasons why she was being discharged. 10 NYCRR § 415.3(h)(1)(iii). Neither the Appellant nor her [REDACTED] received a written discharge notice before the Appellant was taken to Kingsbrook, or at any time thereafter. It is further noted that the discharge notice which was eventually produced stated that the Appellant was being discharged to Kingsbrook.

Discharge to an acute care hospital is not an appropriate discharge plan. The Facility's determination fails to comport with regulatory requirements and is not sustained.

DECISION AND ORDER

Oceanview Nursing and Rehabilitation has not established that its determination to discharge the Appellant was necessary and that the discharge plan is appropriate.

1. Oceanview Nursing and Rehabilitation is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the facility, pursuant to 10 NYCRR § 415.3(h)(2)(i)(d).

Dated: May 25, 2018
New York, New York



Natalie J. Bordeaux
Administrative Law Judge