



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

August 14, 2018

CERTIFIED MAIL/RETURN RECEIPT

Barbara Phair, Esq.
Abrams, Fensterman, Fensterman, etal.
3 Dakota Drive, Suite 300
Lake Success, New York 11042

[REDACTED]
C/o Kenneth Wigginton, SW
NY Presbyterian Hospital
506 6th Street
Brooklyn, New York 11215

Rochelle Steinmetz, SW
Oceanview Nursing and Rehab
315 Beach 9th Street
Far Rockaway, New York 11691

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: 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

OCEANVIEW NURSING AND
REHABILITATION CENTER

Respondent,

to discharge her from a residential health
care facility.

COPY

DECISION

Hearing Before:

Matthew C. Hall
Administrative Law Judge

Held at:

New York Presbyterian,
Methodist Hospital
506 6th Street
Brooklyn, New York 11215

Hearing Date:

August 8, 2018

Parties:

Oceanview Nursing and
Rehabilitation Center
315 Beach 9th Street
Far Rockaway, New York 11691
By: Barbara Phair, Esq.

[REDACTED]

PRO SE

JURISDICTION

Without notice, Oceanview Nursing and Rehabilitation Center (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to Title 10 of the Official Compilation of Codes Rules, and Regulations (NYCRR) § 415.3(h).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and Attached Facility Discharge Notice

Facility Exhibits: 1 - Progress Notes [REDACTED] 18 - [REDACTED] 18)
2 - Psychiatric History & Physical Systems
3 - Patient Review Instrument [REDACTED] /18)
4 - Screen Form [REDACTED] 18)
5 - Psychiatry Consult Note [REDACTED] 18)

Appellant Exhibits: None

Facility Witnesses: Rochelle Steinmetz - Social Worker
Meril Fraser-John - Registered Nurse

Appellant Witnesses: Dr. Jessy Kolah, M.D.
Kenneth Wigginton - Social Worker

ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its 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 cited evidence.

1. The Appellant, a [REDACTED] year-old woman, was admitted to the Facility on [REDACTED] 2018, with diagnoses of [REDACTED]

[REDACTED]
[REDACTED] (Ex. 2).

2. On [REDACTED] 2018, the Facility determined to discharge the Appellant to New York Presbyterian, Methodist Hospital (Hospital) at 506 6th Street, Brooklyn, New York. (Ex. 1).

3. Dr. Heisman, a Facility [REDACTED] ordered the discharge so the Appellant could receive a [REDACTED] evaluation. (Ex. 1).

4. The Facility did not provide the Appellant or her representative with a notice of transfer/discharge. (T. Steinmetz, Wigginton).

5. After the Appellant was evaluated by Dr. Kolah, the attending [REDACTED] at the Hospital, he determined that the Appellant was [REDACTED] fit to return to the Facility. (T. Kolah).

6. The Facility refused to readmit the Appellant to the Facility because she was "a danger to others at the Facility." (Ex. 1, T. Steinmetz).

7. The Appellant has remained at the Hospital pending the outcome of this proceeding.

APPLICABLE LAW

A residential health care facility (also referred to in the Department of Health Rules and 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).

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR § 415.3[h][1]).

10 NYCRR § 415.3(h)(1)(iii)(a) provides that, before it transfers or discharges a resident, the facility shall notify the resident and designated representative of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

10 NYCRR § 415.3(h)(1)(iii) and (iv) both require that all nursing home residents be provided with the discharge notice before transfer/discharge.

DISCUSSION

The Facility refused to readmit the Appellant to the Facility because she was "a danger to others at the Facility." (Ex. 1, T. Steinmetz). At the hearing, the Facility added that it was unwilling to readmit the Appellant until the Hospital provided the Appellant's Hospital records, but offered no legal basis for such a demand. In the alternative, the Facility requested a referral from Dr. Kolah which would allow the Appellant to be transferred to a facility which could provide a higher level of care. Dr. Kolah did not agree with the Facility's determination that the Appellant needed such care, however, and denied the Facility's request.

Regardless, the Facility's determination to transfer the Appellant to the Hospital and its refusal to readmit the Appellant

when there is no basis for her continued hospital admission violate the Appellant's rights under 10 NYCRR § 415.3(h). The Facility does not have the authority to ignore its requirements under the regulation to formulate an appropriate discharge plan and to provide a resident with proper notice of that discharge.

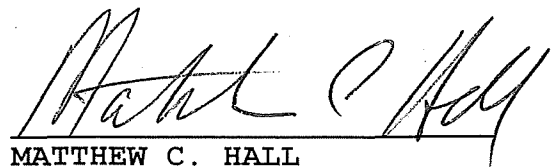
Based on the Facility's failure to follow the procedural requirements under 10 NYCRR § 415.3(h), the question of whether the transfer/discharge was warranted and whether the discharge plan was appropriate will not be addressed in this decision.

DECISION AND ORDER

The Appeal by the Appellant is GRANTED.

Oceanview Nursing and Rehabilitation Center is directed to re-admit 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: Albany, New York
August 13, 2018



MATTHEW C. HALL
Administrative Law Judge