



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 6, 2018

CERTIFIED MAIL/RETURN RECEIPT

Dawn James, Administrator
Wyoming County Community
Hospital/SNF
400 North Main Street
Warsaw, New York 14569

[REDACTED]
C/o Wyoming County Community
Hospital/SNF
400 North Main Street
Warsaw, New York 14569

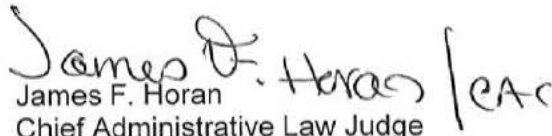
RE: In the Matter of [REDACTED] Discharge Appeal

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



Appellant,

from a determination by

**Wyoming County Community Hospital
Skilled Nursing Facility,**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION

Hearing Before: John Harris Terepka
Administrative Law Judge

Held at: Wyoming County Community Hospital/SNF
400 North Main Street
Warsaw, New York 14569

Hearing Date: August 3, 2018

Parties: Wyoming County Community Hospital/SNF
400 North Main Street
Warsaw, New York 14569

By: Dawn James, Administrator

 *pro se*

JURISDICTION

Wyoming County Community Hospital/SNF (the Respondent), a residential health care facility subject to Article 28 of the Public Health Law, determined to discharge [REDACTED] (the Appellant) from care and treatment in its nursing home. Pursuant to 10 NYCRR 415.3, the Appellant appealed the discharge determination to the New York State Department of Health.

SUMMARY OF FACTS

1. Respondent Wyoming County Community Hospital/SNF is a residential health care facility (RHCF) located in Warsaw, New York.
2. Appellant [REDACTED] age [REDACTED] was admitted to the facility in [REDACTED] 2017 for rehabilitation following a [REDACTED]. His diagnoses include [REDACTED] for which he receives outpatient [REDACTED] treatment in [REDACTED] (Exhibit 1.)
3. By notice dated [REDACTED] 2018, the Respondent advised the Appellant that it had determined to discharge him on [REDACTED] 2018, on the grounds that his health has improved sufficiently that he no longer needs the services provided by the facility, and because the safety and health of residents in the facility would be endangered by his continued residence. (Exhibit ALJ I.)
4. The Appellant is no longer in need of nursing home care. He is independent with all care needs and receives no services from the Respondent other than meals and medication. All of the Appellant's medical needs can be met on an outpatient basis.
5. The discharge notice advised the Appellant he would be discharged to the [REDACTED] [REDACTED] a motel in [REDACTED]. One month's rent will be paid by the [REDACTED].

Respondent. The motel is handicap and wheelchair accessible, provides breakfast, and meal delivery service is available. The room contains a microwave and refrigerator.

6. The discharge plan includes appropriate referrals for medical care and ongoing housing assistance. The Appellant will leave the facility with a supply of his medications. Arrangements will be in place for his continuing medical care, including medication delivery and transportation for his [REDACTED] treatment in [REDACTED]. Housing assistance through Independent Living will continue and assistance from the appropriate county Department of Social Services will be available.

7. The Appellant remains at the Respondent facility pending the outcome of this proceeding.

ISSUES

Has the Respondent established that the transfer is necessary and the discharge plan appropriate?

APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, 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. PHL 2801; 10 NYCRR 415.2(k).

Transfer and discharge rights of RHCF residents are set forth in Department regulations. A resident may be transferred when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that 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. A

resident may also be transferred when the safety of individuals in the facility is endangered. 10 NYCRR 415.3(h)(1). The facility has the burden of proving that the discharge or transfer is necessary and the discharge plan appropriate. 10 NYCRR 415.3(h)(2)(iii)(b).

DISCUSSION

Social work and discharge planners Cherie May and Rebecca Olhson testified for the Respondent. The Appellant testified on his own behalf. Shelley Stout, a long-term care ombudsperson with Lifespan of Rochester, and Jennifer Williams, a transition specialist with Independent Living of the Genesee Region, also participated in the hearing. The notice of hearing, with attached copy of the notice of discharge, was entered into evidence as ALJ Exhibit I. Documents from the facility's records were entered into evidence as Exhibits 1 and 2. The hearing was digitally recorded.

It is uncontroverted that the Appellant is no longer in need of nursing home care. The Appellant offered no medical opinion or evidence that calls this conclusion into question. At the hearing, he agreed he can live on his own in the community and wants to do so. Appropriate grounds for discharge having been established in that the Appellant no longer needs nursing home care, the Respondent's alternative grounds that safety of individuals in the facility is endangered need not be considered.

Facility records and the testimony of the facility's discharge planners establish that the Respondent has made extensive efforts since approximately [REDACTED] 2018, by which time it was already clear that the Appellant did not need nursing home care, to arrange a safe and appropriate discharge plan. The parties agree that discharge to independent living is entirely appropriate.

The Respondent's discharge planners attempted to find a rental apartment for the Appellant in the [REDACTED] area, where he is from and where he wishes to return. Well over a dozen rental facilities in the [REDACTED] area were contacted. In some instances there were waiting lists, but in others the Appellant was rejected for financial and other reasons. (Exhibits 1, 2; Testimony.) Ms. Williams of Independent Living also worked with the Appellant for three months to find permanent housing for him, without success.

It was only after these efforts to find permanent housing failed that the Respondent turned to hotels or motels as a discharge location. The combination of a monthly stay, along with appropriate and safe accommodations with availability of food, health care and handicap accessibility limited the options. The [REDACTED] which is near [REDACTED] and has the services needed, has accepted the Appellant for a month's stay, for which the Respondent will pay. Lifespan and the appropriate county Department of Social Services will assume responsibility for further long-term housing assistance.

The Respondent's obligation is to provide an appropriate discharge plan that meets the Appellant's needs, not necessarily the discharge plan of the Appellant's choice. There is no dispute that the Appellant is not in need of nursing home care. He is not entitled to remain in nursing home care he does not need until he finds living arrangements that he wants. At the hearing, the Appellant asked to stay at the Respondent facility for the month of [REDACTED] 2018 in order to arrange his own discharge. The Respondent's plan to pay for his stay at the [REDACTED] for one month will allow him that time and more to make his arrangements. Under these circumstances, the

Respondent's plan is an appropriate and safe discharge plan and the Respondent is entitled to proceed with it.

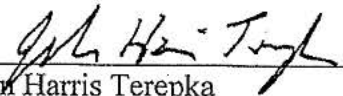
The Respondent has met its burden of proving that the discharge is authorized and the discharge plan is appropriate.

DECISION: Respondent Wyoming County Community Hospital/SNF has established valid grounds for the discharge of Appellant [REDACTED] and has established that the discharge plan is appropriate.

The Respondent is authorized to discharge the Appellant on [REDACTED] 2018 in accordance with the discharge notice.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York
August 3, 2018



John Harris Terepka
Administrative Law Judge
Bureau of Adjudication