



Department of Health

ANDREW M. CUOMO
Governor

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

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

September 10, 2018

CERTIFIED MAIL/RETURN RECEIPT

Liana Rutenberg-Diaz, Administrator
Fordham Nursing & Rehab
2678 Kingsbridge Terrace
Bronx, New York 10463

[REDACTED]
c/o Fordham Nursing & Rehab
2678 Kingsbridge Terrace
Bronx, New York 10463

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: cmg
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

FORDHAM NURSING AND REHABILITATION CENTER,

Respondent,

to discharge him from a residential health
care facility.

COPY

DECISION

-----X
The Fordham Nursing and Rehabilitation Center ("Facility")
issued a Notice of Transfer/Discharge, dated [REDACTED] 2018, to
[REDACTED] ("Resident"). The Resident appealed the Facility's
proposed discharge. On September 6, 2018, a hearing was held before
WILLIAM J. LYNCH, ESQ., ADMINISTRATIVE LAW JUDGE.

The hearing was held in accordance with the Public Health Law
of the State of New York; Part 415 in Volume 10 of the Official
Compilation of Codes, Rules and Regulations of the State of New
York ("NYCRR"); Part 483 of the United States Code of Federal
Regulations ("CFR"); the New York State Administrative Procedure
Act ("SAPA"); and 10 NYCRR Part 51.

Evidence was received and witnesses were examined. An audio
recording of the proceeding was made. The hearing was held at the

Facility located at 2678 Kingsbridge Terrace, Bronx, New York. The following individuals were present for the hearing: [REDACTED] Resident; Jessica Luperon, Director of Social Work; Liana Rutenberg-Diaz, Administrator, Amit Saxena, M.D., Medical Director; Tiara Toler, O.T. Assistant; Pooja Nanwani, P.T.; and Boris Lipin, Assistant Administrator.

STATEMENT OF THE CASE

The Facility issued a determination proposing to discharge the Resident effective [REDACTED] 2018. The stated reason for the discharge was that the Resident's health had improved sufficiently so that he no longer required the services of the Facility. The Resident filed a timely request for an appeal of the discharge decision and has remained in the Facility pending this determination.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether the Facility has established a basis which permits the Resident's discharge from the Facility and whether the proposed discharge plan is appropriate. The Facility has the burden of proving its

case by substantial evidence. (10 NYCRR § 415.3[h][2][iii], SAPA § 306[1]).

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Citations in parentheses refer to testimony or exhibits. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. The Resident is a [REDACTED] year-old male who was admitted to the Facility on [REDACTED] 2018 for the administration of [REDACTED] antibiotics and [REDACTED]-term rehabilitation. (Facility Ex. 1; Recording @ 6:00).

2. The Resident no longer requires [REDACTED] antibiotics, and he independently performs all activities of daily living. (Facility Ex. 2; Recording @ 45:45).

3. The Facility's interdisciplinary care team determined that the Resident no longer required skilled nursing services and could safely be discharged. (Facility Ex. 2; Recording @ 12:15).

4. The Resident's attending physician determined that the Resident was medically stable and agreed with the discharge plan. (Facility Ex. 1; Recording @ 42:00).

5. On [REDACTED] 2018, the Facility issued a discharge notice to the Resident which proposes discharge to the [REDACTED] Shelter located at [REDACTED] (Facility Ex. 2, 3).

ANALYSIS AND CONCLUSIONS

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations. (10 NYCRR 415.3[h][1]). The Facility alleged that the Resident's discharge is permissible pursuant to 10 NYCRR 415(h)(1)(i)(a)(2), which states:

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.

The Facility offered the testimony of a physician, a physical therapist, an occupational therapist, and a social worker to establish that there is no reason for the Resident to remain in a skilled nursing facility. After completing a course of [REDACTED] antibiotics and a program of rehabilitation, the Resident can independently perform all activities of daily living.

The Resident asked to remain in the Facility because he wants to receive additional physical therapy and has [REDACTED] medical conditions; however, the testimony of the physical therapist established that the Resident has met his rehabilitation goals and the testimony of the physician established that the Resident can obtain any required follow up medical care as an outpatient.

Since the Resident had previously been placed by the [REDACTED], the Facility contacted [REDACTED] and was informed that the Resident's case has been transferred to the [REDACTED] Shelter. The Director of Social Work testified that a discharge packet containing all required medical information will be sent to [REDACTED] prior to the Resident's discharge, and that the Resident will have an assigned caseworker to assist the Resident with the transition.

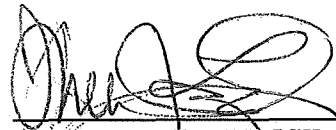
Based upon the evidence produced at the hearing, I find that the Resident no longer needs to reside in a skilled nursing facility and that he can obtain any required follow-up medical care on an outpatient basis while living in the community.

DECISION AND ORDER

1. The Facility is authorized to discharge the Resident in accordance with its discharge plan.

2. 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: Albany, New York
September 7, 2018



WILLIAM J. LYNCH
Administrative Law Judge