



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

November 16, 2018

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Brooklyn United Methodist Church Home
1485 Dumont Avenue
Brooklyn, New York 11208

Ketanya Mitchell, Social Worker
Brooklyn United Methodist Church Home
1485 Dumont Avenue
Brooklyn, New York 11208

Juliana Nunez, Ombudsman
80-02 Kew Gardens Road
Suite 400
Kew Gardens, New York 11415

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

Brooklyn United Methodist Church Home,
Respondent,

to discharge her from a residential health care facility.

COPY

DECISION

Hearing Before: Ann H. Gayle
Administrative Law Judge

Held at: Brooklyn United Methodist Church Home
1485 Dumont Avenue
Brooklyn, New York 11208

Hearing Date: November 8, 2018

Parties: Brooklyn United Methodist Church Home
By: Ketanya Mitchell

[REDACTED]
Pro Se

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 Brooklyn United Methodist Church Home (“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 part of the record. Appellant appeared and testified on her own behalf. Juliana Nunez of the NYS Ombudsman’s office assisted Appellant at the hearing and gave testimony. The following witnesses testified for Respondent: Ketanya Mitchell–Social Worker, Shannon Spivey Mayo, R.N.–MDS, and Cherie Conliffe–Registered Dietician.

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

ALJ:

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

Facility:

- 1: PRI
- 2: Physical Therapy Module
- 3: Occupational Therapy discontinuance and reinstatement
- 4: Physician notes
- 5: Social Work progress notes

Resident:

- A: Abstract re [REDACTED]
- B: [REDACTED] 2004 letter from Dr. Jacobs to Dr. Maidman, and emails from Appellant to Ombudsman

ISSUE

Has Brooklyn United Methodist Church Home 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. Any conflicting evidence was considered and rejected in favor of the cited evidence.

- 1. Respondent, Brooklyn United Methodist Church Home, is a residential health care facility located in Brooklyn, New York. (Ex I)
- 2. Appellant [REDACTED] age [REDACTED] was admitted to the Facility from [REDACTED] Hospital on [REDACTED] 2018. Appellant, who is alert and oriented times three and independent

in all her ADLs (activities of daily living), currently receives no skilled care at the Facility. (Ex 1; Ex 2; T Mayo, Conliffe, Mitchell)

3. By two notices¹ each dated [REDACTED] 2018, Respondent advised Appellant that it had determined to discharge her on the grounds that her health has improved sufficiently so that she no longer needs the services provided by the Facility. (Ex I)

4. Appellant's past and present medical conditions include [REDACTED]

[REDACTED] These conditions, including Appellant's risk factors for their continuation, potential recurrence and/or need for surgery in the future, can be treated in the community. (Ex 1; Ex 4; Ex B; T Mayo)

5. Respondent's discharge plan on one discharge notice is discharge to the [REDACTED] Shelter [REDACTED] ("Shelter") located at [REDACTED] and on the other is discharge to [REDACTED] Home for Adults [REDACTED], an assisted living facility, located at [REDACTED] (Ex I)

6. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's physician, that discharge to the community, including the Shelter or an assisted living facility, is appropriate for Appellant who is very independent and capable of making her needs known and managing her medications and medical treatment in the community. (Ex 4; Ex 5; T Mayo, Mitchell)

7. Appellant has remained at Brooklyn United Methodist Church Home pending the outcome of this proceeding.

¹ On [REDACTED] 2018, Respondent provided Appellant with two discharge notices; the grounds for discharge were the same on each discharge notice. The discharge location identified in each notice was different. Both discharge notices are the subject of this appeal hearing.

DISCUSSION

The evidence presented by Respondent demonstrated that: Appellant completed her rehabilitative services; she is independent with her ADLs; she has no skilled needs; her medical conditions are stable and can be treated in the community; she is capable of administering and managing her medications; she ambulates freely with no assistive devices and regularly goes out on pass independently; and discharge to the Shelter or assisted living is a safe and appropriate discharge plan for Appellant. The Shelter would assist Appellant in finding more permanent housing.

Appellant does not wish to remain at the Facility; she alleges that "it is a terrible place where her health has deteriorated" but she believes discharge to the Shelter of [REDACTED] is not a safe plan for her. Appellant testified that due to her history of having experienced [REDACTED]

[REDACTED] she is concerned that placement in a Shelter or [REDACTED]

would cause [REDACTED] that could lead to [REDACTED]

[REDACTED] has accepted Appellant, but Appellant does not wish to reside at [REDACTED]

which is located in [REDACTED]. Appellant is concerned that no one will visit her at [REDACTED]

and it will be more difficult to get to her medical appointments in [REDACTED] and

elsewhere from [REDACTED] than it is to get there from the Facility in [REDACTED]. Appellant was

informed that the decision for this appeal hearing could allow the Facility to involuntarily

discharge her to the Shelter but that Appellant could not be involuntarily discharged to [REDACTED]

Appellant was encouraged to keep an open mind about [REDACTED]

Appellant further testified that she would like to reside at the [REDACTED] in

[REDACTED]), and that her friend is exploring this for Appellant. At the

hearing, Respondent indicated that it would assist Appellant with this potential discharge plan but Appellant expressed her desire to explore this independently.

CONCLUSION

Respondent has proven that Appellant's health has improved sufficiently that she no longer requires skilled care, and that discharge to the Shelter of [REDACTED] is appropriate for Appellant at this time. Speculation that past or current medical conditions might recur or worsen in the future or that the discharge location might trigger an unfavorable medical event is not sufficient to warrant remaining in a skilled facility when there are no skilled needs, and the discharge location has been shown to be appropriate. Appellant indicated that if she is discharged to the Shelter she will not go there; she will find another place to live. Appellant will be given additional time to reconsider [REDACTED] and to pursue discharge or transfer to [REDACTED] or elsewhere.

DECISION

I find that the transfer is necessary and the discharge plan is appropriate.

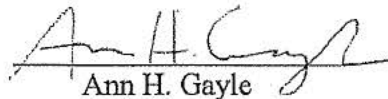
The appeal by Appellant is therefore DENIED.

Respondent, Brooklyn United Methodist Church Home, is authorized to discharge Appellant in accordance with the [REDACTED] 2018 discharge notices. Appellant may be involuntarily discharged to the Shelter, but she can be discharged to [REDACTED] only upon her consent. The discharge shall occur no sooner than [REDACTED] 2018, to give Appellant an opportunity (independently or with Respondent's assistance) to continue to explore and possibly secure discharge elsewhere. Appellant may leave the Facility sooner than [REDACTED] 2018, if transfer/discharge to [REDACTED] or elsewhere is available, if housing suitable and acceptable to her is secured prior to that date, or for any other reason Appellant chooses to leave.

[REDACTED] BUMCH

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
November 15, 2018


Ann H. Gayle
Administrative Law Judge

TO: [REDACTED]
c/o Brooklyn United Methodist Church Home
1485 Dumont Avenue
Brooklyn, New York 11208

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