



Department of Health

ANDREW M. CUOMO
Governor

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

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

October 31, 2018

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o North Central Bronx Hospital
3424 Cossuth Ave. Office #11M
Bronx, New York 10467

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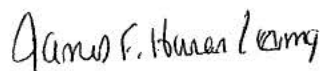
RE: In the Matter of [REDACTED] – Discharge Appeal

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:
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

Amsterdam Nursing Home

Respondent,

to discharge him from a residential
health care facility.

COPY

**DECISION
AND
ORDER**

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held at: North Central Bronx Hospital
3424 Kossuth Avenue, Office #12A
Bronx, New York 10467

Hearing Date: October 29, 2018

Parties: Amsterdam Nursing Home
By: Adam D. Kahn, Esq.
Genser, Dubow, Genser & Cona LLP
225 Broadhollow Road, Suite 200
Melville, New York 11747

[REDACTED]
By: Jeffrey G. Abrandt, Esq.
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JURISDICTION

Amsterdam Nursing Home (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (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: William J. Pascoello, Administrator
Lindy Arlantino, Assistant Director of Nursing

Facility exhibits: None

Appellant witnesses: Tia Dole, Director of Psychology, North Central Bronx Hospital (NCBH)
Veeresh Bajaj, MD, Director of Inpatient Psychiatry, NCBH
Nicole Menna, Social Worker, Geriatric Psychiatry Unit, NCBH

Appellant exhibits: A

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

ISSUES

Has Amsterdam Nursing Home established that the Appellant’s discharge was necessary and the discharge plan appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to Amsterdam Nursing Home on [REDACTED] 2016 for rehabilitation.
2. The Appellant is diagnosed with [REDACTED] a condition which has [REDACTED] [REDACTED]
3. On [REDACTED] 2018, Facility staff arranged for the Appellant’s transportation to NCBH for treatment of [REDACTED] behavior, including [REDACTED] [REDACTED]

4. NCBH staff have attempted to effectuate the Appellant's return to the Facility since [REDACTED] 2018, and were repeatedly advised that the Facility would not allow the Appellant to return.
5. The Facility failed to advise the Appellant's designated representative that the Appellant was being discharged, and failed to provide the Appellant's designated representative with a discharge plan for the Appellant.
6. The Appellant has neither a medical nor psychiatric need for continued hospitalization.
7. A hearing was held on October 29, 2018, during which the Facility was directed to readmit the Appellant to the next available semi-private bed. This written decision is the final administrative determination regarding the 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).

The residential health care facility must prove by substantial evidence that the discharge was necessary, and the discharge plan was appropriate. 10 NYCRR § 415.3(h)(2)(iii); State Administrative Procedure Act § 306(1).

DISCUSSION

On [REDACTED] 2018, the Appellant was transported to NCBH after [REDACTED] involving [REDACTED]. Since [REDACTED] 2018, NCBH [REDACTED] staff have repeatedly advised the Facility that the Appellant's condition was stable and that he was ready to return to the nursing home. The Facility consistently refused to allow the Appellant to return.

Lindy Arlantico, the Facility's Assistant Director of Nursing, confirmed that the Facility had not issued a discharge notice to the Appellant and his representative. She explained that the Facility arranged for the Appellant's hospitalization to help him obtain needed care. The Facility was required to advise the Appellant and his designated representative in writing that he was being discharged, and the reasons why he was being discharged. 10 NYCRR § 415.3(h)(1)(iii). Furthermore, the Appellant's discharge to NCBH, 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

Amsterdam Nursing Home has not established that the Appellant's discharge was necessary and the discharge plan appropriate.

1. Amsterdam Nursing Home 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: October 30, 2018
New York, New York



Natalie J. Bordeaux
Administrative Law Judge