



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 15, 2018

CERTIFIED MAIL/RETURN RECEIPT

Donna Reilly-Boccia, Director
Westchester Medical Center – Behavioral Health
100 Woods Road
Valhalla, New York 10595

Barbara F. Kukowski
Vice President, Legal Affairs
Westchester Medical Center Health Network
Office of Legal Affairs
100 Woods Road, Taylor Pavilion, 2nd Floor
Valhalla, New York 10595

[REDACTED]
c/o Westchester Medical Center -
Behavioral Health
100 Woods Road
Valhalla, New York 10595

Susan Marotta, Esq.
Associate General Counsel
Archdiocese of New York
Office of Legal Affairs
1011 First Avenue, Suite 1150
New York, New York 10022

[REDACTED]
Diane Judson, CCO
Ferncliff Nursing Home
21 Ferncliff Drive
Rhinebeck, New York 12572

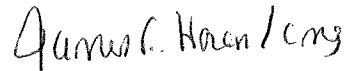
RE: In the Matter of [REDACTED] – Discharge Appeal

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,

Handwritten signature of James F. Horan in cursive script, including the initials 'cmg' at the end.

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

Ferncliff Nursing Home

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION

Hearing Before: Natalie J. Bordeaux, Administrative Law Judge

Held at: Westchester Medical Center
100 Woods Road
Valhalla, New York 10595

Parties: Ferncliff Nursing Home
By: Susan M. Marotta, Associate General Counsel
Archdiocese of New York
Office of Legal Affairs
1011 First Avenue, 11th Floor
New York, New York 10022

By: [REDACTED]

Also appearing: Lisa Herman, Deputy Chief Attorney
Mental Hygiene Legal Service
140 Old Orangeburg Road
Building #1, Second Floor
Orangeburg, New York 10962

Westchester Medical Center
By: Barbara F. Kukowski, Vice President, Legal Affairs

JURISDICTION

Ferncliff Nursing Home (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge ██████████ (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: Alicia O’Keefe, New Unit Coordinator
Dr. Anthony Lechich, Medical Director, ArchCare
- Facility exhibits: 1-6
- Appellant witnesses: ██████████ Appellant’s ██████████ and Attorney-in-Fact
Dr. Mitchell S. Nobler, Unit Chief, B3 Inpatient Care, Westchester Medical Center (WMC)
Dr. Stephen Ferrando, Directory of Psychiatry, WMC
Denise Davis, WMC Behavioral Health Center Director of Nursing
- Appellant exhibits: A-E
- ALJ exhibits: I-II

A digital recording of the hearing was made.

ISSUES

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

FINDINGS OF FACT

1. The Appellant is ██████████ year-old male who was admitted to Ferncliff Nursing Home on ██████████ 2018 for long-term care specializing in ██████████. Although the Facility has a residential unit for ██████████, the Appellant was placed on a general skilled-nursing unit. (Exhibit 2; Recording @ 20:45.)

2. The Appellant's diagnosis of [REDACTED] has triggered bouts of [REDACTED] (Recording @ 59:57.)
3. On [REDACTED], 2018, the Appellant was transported to [REDACTED] after the Appellant [REDACTED] [REDACTED] (Exhibits 1 and 4.)
4. On [REDACTED] 2018, [REDACTED] was informed that the Facility would not allow the Appellant to return. (Recording @ 39:22.)
5. The Facility failed to advise the Appellant and his designated representative that the Appellant was being discharged and failed to provide a discharge plan for the Appellant. (Recording @ 16:18.)
6. The Appellant has neither a medical nor [REDACTED] need for continued hospitalization. (Recording @ 1:07:06; 1:13:00; 1:38:45.)
7. A hearing was held on November 9, 2018, during which the Facility was directed to readmit the Appellant to the next available semi-private bed. (Recording @ 1: 55:00.) 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).

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] 2018 for long-term care of [REDACTED]. Since his admission, the Appellant has had [REDACTED] episodes of [REDACTED] [REDACTED] five of which have resulted in the Appellant's transfer to an acute care hospital for evaluation. (Exhibits 1, 2 and 3.)

On [REDACTED] 2018, the Appellant was transported to [REDACTED] after an [REDACTED] during which he [REDACTED] (Exhibits 1 and 4.) When [REDACTED] staff advised the Facility on [REDACTED] 2018 that the Appellant's condition was stable and that he was ready to return to the nursing home, the Facility refused to allow the Appellant to return. (Recording @ 39:22.) The Facility provided no notice to either the Appellant or his [REDACTED] his designated representative pursuant to 10 NYCRR § 415.2(f)(1) of its refusal to re-admit the Appellant. (Recording @ 16:18.)

In addition, the Facility has devised no discharge plan for the Appellant. Dr. Lechich, the Facility's Medical Director, confirmed that the Appellant's continued stay at [REDACTED] or any other acute care hospital is not appropriate. However, he also insisted that the Appellant cannot safely remain at the Facility because he presents a [REDACTED] (Recording @ 34:35; 52:37.) Both Dr. Lechich and Facility Social Work Coordinator Alicia O'Keefe seek [REDACTED] assistance to obtain placement for the Appellant at an [REDACTED] unit, possibly at [REDACTED] hospital. (Recording @ 7:10; 34:45; 40:48.) These statements belie the requirements set forth in 10 NYCRR § 415.3(h)(1)(vi). It is no [REDACTED] legal

obligation to procure a suitable discharge plan for the Appellant. The Facility bears responsibility for the Appellant's care and any discharge planning.

Before his admission to the Facility, the Appellant had undergone a Level II pre-admission screening and resident review (PASRR), a process for patients with mental health illnesses seeking nursing facility admission, 42 CFR Part 483. The Level II screener determined that nursing home placement (rather than placement at a [REDACTED] hospital as is currently suggested) was appropriate for the Appellant. No subsequent Level II screening has occurred. (Recording @ 52:57.)

The Facility's speculation regarding the propriety of the Appellant's placement in a [REDACTED] hospital is not supported by the record. The Appellant's [REDACTED] tendencies are the result of [REDACTED] (Recording @ 59:38: 1:24:11.) Dr. Michell Nobler, WMC's Unit Chief at the Behavioral Health Center Inpatient Unit, testified that transferring the Appellant to a [REDACTED] hospital is inappropriate and stated that the Appellant would not be accepted by any such hospital because he does not meet the admission criteria. Dr. Nobler asserted that the Appellant cannot receive adequate treatment in a [REDACTED] unit when his primary diagnosis is [REDACTED] [REDACTED] (Recording @ 1:03:09.)

Dr. Nobler and Dr. Ferrando (WMC's Director of Psychiatry) both confirmed that the Appellant will not benefit from continued hospitalization as he has neither a medical nor a [REDACTED] need for hospital intervention. Adjustments to the Appellant's medications and attempts to modify the Appellant's behavior (to the extent such are needed), are functions that Facility staff may perform. Dr. Nobler expressed concern for continuing to strengthen the Appellant's [REDACTED] medications. He explained that [REDACTED] has found no change in the

Appellant's behavior based upon the hospital's administration of different combinations of medications, some of which are being used for "off-label" purposes. Further augmentation of the Appellant's medication regimen constitutes a which finds wholly inappropriate as a means of addressing the Appellant's behavior. (Recording @ 59:38.)

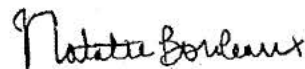
The Facility was required to advise the Appellant and his designated representative in writing that he was being discharged, and the reasons why he was being discharged. 10 NYCRR § 415.3(h)(1)(iii). Neither the Appellant nor his designated representative were afforded such notice. Furthermore, the Appellant's discharge to an acute care hospital, is not an appropriate discharge plan. While the Facility is legally authorized to remove the Appellant from its premises for medical evaluation and treatment, there is no legal authority for the Facility to refuse to re-admit the Appellant after he is cleared by the evaluating hospital to be able to return. The Facility's determination fails to comport with regulatory requirements and is not sustained.

DECISION AND ORDER

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

Fencliff 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: November 14, 2018
New York, New York



Natalie J. Bordeaux
Administrative Law Judge