



Department of Health

ANDREW M. CUOMO
Governor

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

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

December 13, 2019

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Bellevue Hospital
462 1st Avenue
New York, New York 10016

Dina Goldenberg, Assoc. DSW
Bellevue Hospital
462 1st Avenue
New York, New York 10016

Susan Sales, NHA
New Gouverneur SNF
227 Madison Street
Manhattan, New York 10002

RE: In the Matter of ██████████ - Discharge Appeal

Dear Parties:

Enclosed please find the Interim Decision in the above referenced matter.

Sincerely,

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: nm
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

NYC Health + Hospitals/Gouverneur SNF,

Respondent,

to discharge him from a residential health care facility.

COPY

**INTERIM
DECISION**

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Bellevue Hospital
462 First Avenue
New York, New York 10016

Hearing Date:

December 9, 2019

Parties:

NYC Health + Hospitals/Gouverneur SNF
By: Susan Sales, Administrator

██████████
Pro Se

Also Participating:

Bellevue Hospital ("Bellevue")
By: Dina Goldenberg, Assoc. Dir. of SW

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 NYC Health + Hospitals/Gouverneur SNF (“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.

Respondent determined to discharge David Fleet (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h). §415.3(h)(1)(i)(a)(3) and (4), (vi) and (vii) read in pertinent part:

(h) Transfer and discharge rights.

...
(1) With regard to the transfer or discharge of residents, the facility shall:

(i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility.

(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:

...
(3) the safety of individuals in the facility is endangered; or

(4) the health of individuals in the facility is endangered;

...
(vi) provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and provide a discharge summary pursuant to section 415.11, subdivision (d) of this Title; and

(vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.

Appellant appealed the discharge determination to the New York State Department of Health. Pursuant to §415.3(h)(2)(iii)(b) the Facility has the burden of proving that the transfer/discharge is necessary and the discharge plan is appropriate.

A transcript of this hearing was made but it has not yet been received from the court reporting service. Appellant appeared at the hearing, represented himself, and testified on his own behalf. Susan Sales, Administrator, and Freda Morales, Social Worker, testified for Respondent. Dina Goldenberg, Associate Director of Social Work, Aisha Williamson, Social Worker, and Susanne Greenblatt, Director of Case Management, testified for Bellevue.

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

ALJ:

- I: Notice of Hearing
- II: Facility’s █, 2019 Discharge/Transfer Notice

Facility:

- 1: Social Work notes
- 2: Workplace violence incident report
- 3: Incident note
- 4: Behavior note
- 5: Interdisciplinary meeting worksheet
- 6: Nursing and Social Work notes
- 7: Interdisciplinary abuse risk assessment

Appellant and Bellevue were given the opportunity to offer documents but did not do so.

STATEMENT OF ISSUES

On █ 2019, Respondent issued Appellant a Discharge/Transfer Notice with a discharge date of █, 2019. Subsequent to issuing this Notice, Appellant was transferred to Bellevue for a planned surgery. When Appellant was ready for discharge from Bellevue, Respondent refused to readmit Appellant to its facility.

FINDINGS OF FACT

Citations in parentheses refer to exhibits (“Ex”) and testimony (“T”) of witnesses.

1. Respondent is a residential health care facility located in New York, New York.
Appellant, age █ was admitted to the Facility on █ 2018. (Ex 1; T Sales)
2. By Notice of Transfer/Discharge (“Discharge Notice”) dated █ 2019, Respondent determined to discharge Appellant on the grounds that the health or safety of Facility residents was endangered due to Appellant’s threats to staff and other residents. The discharge location is Appellant’s █ home. The discharge was to be effective █ 2019. Although not stated on the Discharge Notice, Respondent alleged that Appellant has smoked cigarettes and █ in his room. At the hearing, Appellant admitted smoking in his room but denied threatening staff or other residents. (Ex II; Ex 1; Ex 2; Ex 3; Ex 4; Ex 6; Ex 7; T Sales, Morales, Appellant)
3. Appellant has remained at Bellevue pending this appeal.

DISCUSSION

A hearing was held on December 9, 2019. Appellant initially indicated that he did not wish to pursue this appeal as he did not want to return to the Facility, and he wished to be discharged to his █ home with home care services. Upon further discussion, Appellant decided to pursue the appeal.

The documentary evidence and testimony showed that Appellant has acted █ and █ toward staff and/or other residents in █, and █ 2019, and that he has smoked in his room in █ and █ 2019. On █ 2019, Appellant apologized for smoking in his room and said he wouldn’t do it again (Ex 6). On █ 2019, Appellant apologized for “█ the attending staff” the previous day (Ex 6). On █

2019, a Facility “Team Decision” determined that Appellant was “at risk for potentially abusing others” (Ex 7). Following the issuance of the █ 2019 Discharge Notice, Appellant agreed to not be █ with staff while he remained at the Facility (T Morales).

The Discharge Notice identified Appellant’s █ home as the discharge location. Appellant is most desirous of being discharged to his █ home with home care services. Facility and Bellevue representatives’ testimony revealed that efforts to secure services for Appellant in his █ home were and continue to be made, but that it will likely take several weeks or more to have those services approved and in place.

A December 12 conference call was scheduled for a report of the PT/OT assessment Bellevue would do in the days following the hearing date. It was reported on the December 12 call that Appellant requires assistance with transfers and that such assistance could be provided by home care services if Appellant is so approved or by responsible, capable adults in Appellant’s █ home. Upon hearing this, Appellant once again indicated that he did not wish to pursue this appeal as he wants to be discharged to his █ home and he believes there is sufficient support available in that home. Bellevue representatives believe that Appellant’s discharge home is not appropriate at this time as there is insufficient support in that home, and Appellant would have to sign himself out of Bellevue AMA (against medical advice) if he wished to go home now. Upon hearing this, Appellant decided once again to pursue the appeal.

A final decision will not be issued until the transcript of the hearing is received. An interim decision was made orally on the December 12 conference call. That decision informed the Parties that Respondent must accept Appellant back at the Facility at this time because although the Facility demonstrated (at least in part due to Appellant’s admission that he smoked

█/Gouverneur

in his room) that Appellant poses a risk to others at the Facility, the Facility did not prove that the discharge location (Appellant's █ home) is appropriate at this time, and Bellevue is not an appropriate discharge location for Appellant. Efforts are being made to secure assessments and potential approval for services in Appellant's █ home. Ms. Sales informed us that Respondent would: readmit Appellant to the Facility by Monday (█) at the latest, and make necessary discharge referrals as it continues discharge planning with Appellant. Appellant was admonished by the ALJ on the conference call that he must abide by the Facility's smoking policy rules for the duration of his stay at the Facility.

This interim decision memorializes the oral decision rendered on the December 12 conference call.

INTERIM DECISION

Respondent must readmit Appellant to its Facility before it admits any other resident.

Dated: New York, New York
December 13, 2019


Ann H. Gayle
Administrative Law Judge

TO:
Susan Sales, Administrator
NYC Health + Hospitals/Gouverneur SNF
227 Madison Street
New York, New York 10002

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