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Department of Health

ANDREW M. CUOMO
Governor

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

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

August 18, 2020

CERTIFIED MAIL/RETURN RECEIPT

Kayshawn Macharie, DSW
Humboldt House Rehabilitation & Nursing
64 Hager Street
Buffalo, New York 14208

[REDACTED]
Humboldt House Rehabilitation & Nursing
64 Hager Street
Buffalo, New York 14208

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

**Humboldt House Nursing &
Rehabilitation,**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION

Hearing before:

John Harris Terepka
Administrative Law Judge

Held at:

Humboldt House Nursing & Rehabilitation
64 Hager Street
Buffalo, New York
By videoconference

Hearing date:

August 17, 2020

Parties:

Humboldt House Nursing & Rehabilitation
64 Hager Street
Buffalo, New York 14208
By: Kayshawn Macharie, Director of Social Work

[REDACTED]
Humboldt House Nursing & Rehabilitation

JURISDICTION

Humboldt House Nursing & Rehabilitation (the Respondent), a residential health care facility subject to Article 28 of the Public Health Law, determined to discharge [REDACTED] (the Appellant) from care and treatment in its nursing home. Pursuant to 10 NYCRR 415.3, the Appellant appealed the discharge determination to the New York State Department of Health.

SUMMARY OF FACTS

1. Respondent Humboldt House Nursing & Rehabilitation is a residential health care facility (RHCF) located in Buffalo, New York.
2. Appellant [REDACTED], age [REDACTED], was admitted to Humboldt House in [REDACTED] 2019 for short-term rehabilitation after hospitalization. He is [REDACTED] with [REDACTED] [REDACTED] (Exhibits 1, 2.)
3. By notice dated [REDACTED] [REDACTED], 2020, the Respondent advised the Appellant that it had determined to discharge him on [REDACTED] [REDACTED] 2020, on the grounds that his health has improved sufficiently that he no longer needs the services provided by the facility. (Exhibit ALJ I; Exhibit 3.)
4. The Respondent's [REDACTED] [REDACTED] discharge notice also advised the Appellant that it had determined to discharge him on the grounds that the health and safety of individuals in the facility have been endangered by his actions. (Exhibit ALJ I; Exhibit 3.)
5. The Appellant is not in need of nursing home care. He is independent with activities of daily living and care needs, is able to manage his own medications, and receives no services from the Respondent other than meals and medication. (Exhibits 5-7.)

6. The Appellant's treating physician at Humboldt House, Dr. Sayalolipavan, has determined he is no longer in need of nursing home care and that discharge is medically appropriate. (Exhibit 5.)
7. The discharge notice advised the Appellant that he would be discharged to the ██████████, where the Appellant has previously resided prior to hospitalization, or at his option to the ██████████ ██████████ for continuing housing assistance. The discharge plan will include medication and medical referral and transportation to the ██████████. (Exhibit 4.)
8. The Appellant remains at Humboldt House pending the outcome of this proceeding.

ISSUES

Has the Respondent established that the transfer is necessary and the discharge plan appropriate?

APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, 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. PHL 2801; 10 NYCRR 415.2(k).

Transfer and discharge rights of RHCF residents are set forth in Department regulations at 10 NYCRR 415.3(i). This regulation provides, in pertinent part:

- (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:
 - (1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;
 - (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;
 - (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(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.

The Respondent nursing home has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

The Respondent submitted documents from the facility's records (Exhibits 1-10), and testimony of five facility staff, including its medical director, director of nursing and a social worker. The Appellant testified on his own behalf. The notice of hearing, with attached copy of the notice of discharge, was entered into evidence as ALJ Exhibit I. A transcript of the hearing was made.

The Respondent's evidence establishes that the Appellant is no longer in need of nursing home care. He is independent in his wheelchair, independent with transfers, able to administer his medications and to perform all activities of daily living. (Exhibits 5-10.) The Appellant does not dispute this conclusion and agrees he does not need to nor does he want to stay in the nursing home. The Respondent has established grounds for discharge pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2).

The Respondent also alleges the Appellant has endangered the safety of individuals in the facility by [REDACTED], and [REDACTED] in the facility. The Respondent presented documentation from its records to substantiate these allegations, and the Appellant offered little to call their accuracy into question. (Exhibits 5, 9.) The Respondent has also established grounds for discharge pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(3) or (4).

With regard to the discharge plan, a nursing home must permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(i)(1)(vii). Although the Appellant has known since [REDACTED] 2020 that the Respondent proposed to discharge him because he did not need nursing home care, he has shown little effort to participate in or make his own alternative discharge arrangements. The Respondent's plan is to refer him back to the [REDACTED], where he resided before his hospitalization and referral to the Respondent for short term rehabilitation.

The Respondent has made efforts to secure housing for the Appellant by referring him to and working with the [REDACTED] and the [REDACTED], which undertook to assist with

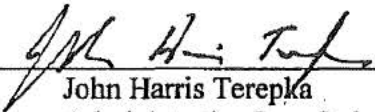
housing needs. (Exhibit 8.) The Appellant acknowledged these efforts at the hearing and claimed that he expects to be accepted by the [REDACTED] for an apartment soon. The Appellant's proposal that he be granted some unspecified amount of time to leave Humboldt House on his own is not appropriate given that he does not need nursing home care, has been exhibiting [REDACTED] and [REDACTED] behaviors, and is [REDACTED] and [REDACTED] into the facility.

The Respondent's obligation is to provide an appropriate discharge plan that meets the Appellant's needs, not necessarily the discharge plan of the Appellant's choice. He is not entitled to remain in nursing home care he does not need until he finds living arrangements that he wants. The Respondent made reasonable efforts to engage him in discharge planning before resorting to the [REDACTED], where he previously resided. Under these circumstances, the Respondent's plan is appropriate and the Respondent is entitled to proceed with it.

DECISION: Respondent Humboldt House Nursing & Rehabilitation has established valid grounds for the discharge of Appellant [REDACTED]. Respondent has established that the discharge plan is appropriate. The Respondent is authorized to discharge the Appellant on Thursday, August 20, in accordance with the discharge plan set forth in the July 28 discharge notice.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York
August 17, 2020


John Harris Terepka
Administrative Law Judge
Bureau of Adjudication