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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

March 2, 2021

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Ditmas Park Rehabilitation Center
2107 Ditmas Avenue
Brooklyn, New York 11226

Yocheved Friedman, Social Worker
Ditmas Park Rehabilitation Center
2107 Ditmas Avenue
Brooklyn, New York 11226

RE: In the Matter of ██████████ ██████████ – 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 :

██████████

Appellant, :

from a determination by :

Ditmas Park Rehabilitation Center, :

Respondent, :

to discharge him from a residential health care facility. :

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DECISION

Hearing Before: Ann Gayle
Administrative Law Judge

Held: Via Cisco Webex

Hearing Date: February 18, 2021

Parties: Ditmas Park Rehabilitation Center
By: Yocheved Friedman, Social Worker

██████████
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 Ditmas Park Rehabilitation Center (“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(i). Respondent determined to discharge ██████ ██████ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(i)(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 §415.3(i)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

A recording of the hearing was made part of the record. Appellant testified on his own behalf. Rehabilitation Director Sherryle Sanchez, Social Worker Yocheved Friedman, and Director of Nursing Mary Asufrin testified for Respondent. Social Worker Rebecca Olson was present at the hearing.

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

ALJ

I: Notice of Hearing with attached Notice of Discharge/Transfer

II: █ 2021 letter

Facility:

1: Progress Notes and Rehabilitation Therapy documentation

2: Consultation and Progress Notes

Appellant was given the opportunity but did not offer any documents into evidence.

ISSUE

Has Ditmas Park Rehabilitation Center established that the discharge is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (“T”) and exhibits (“Ex”) found persuasive.

1. Respondent, Ditmas Park Rehabilitation Center, is a residential health care facility located in Brooklyn, New York. (Ex I; Ex 1)
2. Appellant, █ age █ was admitted to the Facility on █ 2020, for short-term care. Appellant received Physical and Occupational Therapy (“PT/OT”), PT from █ to █, 2020, and OT from █ to █ 2020, when he achieved his highest practical level in each discipline. Appellant is alert and oriented, and able to make his needs known and perform his ADLs (activities of daily living) independently with some assistance. Appellant ambulates with no assistive devices; occasionally he uses a cane. (Ex 1; Ex 2; T Sanchez, Friedman, Asufrin)
3. It is the professional opinion of Appellant’s caregivers at the Facility that discharge to the community is appropriate for Appellant. Appellant previously lived in an assisted living facility, █ By notice dated █ 2021, Respondent advised Appellant that it had determined to discharge Appellant to █ located at █, on the grounds that Appellant’s

health has improved sufficiently so he no longer needs the services provided by the Facility.

██████ did not accept Appellant in ██████ 2020, but accepted him in ██████ 2021. (Ex I; Ex 1; Ex 2; T Sanchez, Asufrin, Friedman)

4. Appellant has remained at the Facility pending the outcome of this proceeding.

DISCUSSION

The evidence presented by Respondent demonstrated that: Appellant is independent with his ADLs; he no longer requires skilled care; any current medical conditions would be treated in the community regardless of whether Appellant is residing at the Facility or in an assisted living facility; and discharge to an assisted living facility is an appropriate discharge location for Appellant. The assisted living facility would be able to provide the ADL assistance Appellant needs.

Appellant previously resided in an assisted living facility, ██████. At Appellant's request to reside in ██████ Respondent explored discharge to ██████ assistant living facilities, but they were unable to accept Appellant. Appellant initially did not wish to return to ██████ upon his reconsideration, Respondent explored discharge to ██████ but ██████ did not accept Appellant last ██████ y and again in ██████ 2021.

Appellant testified that he does not intend to remain at the Facility long term but he does not believe he is medically ready for discharge at this time due to the following medical conditions which he would like addressed while he remains at the Facility: the pain he experiences "████████████████████", and what Appellant calls a "██████████" which Appellant found on his ██████. Appellant testified that two physicians explored this and said "it's not a problem but should be removed." Appellant wants his medical conditions to be "properly addressed in a medical facility" and then he can be "brought back" to this Facility or another

██████ / Ditmas

skilled facility upon discharge. Appellant's testimony confirms Respondent's position that Appellant does not need to remain in the Facility for medical conditions that would be treated in the community.

Appellant, who was agreeable to discharge to ████████, participated in a virtual meeting with ████████, and ████████ accepted him. However, Appellant testified that when he's "ready for discharge" he would be amenable to return to ████████ but he does not wish to be discharged to ████████ because he has no relatives on ████████ and his medical practitioners are not near ████████. Ms. Friedman did not know if ████████ would accept Appellant if he no longer wishes to reside there. Respondent must ascertain if ████████ will accept Appellant under these circumstances.

DECISION

I find that the Facility has proved by substantial evidence that the discharge is necessary and the discharge location is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Ditmas Park Rehabilitation Center, is authorized to discharge Appellant in accordance with the ████████ 2021 Discharge Notice. The discharge shall occur following confirmation from ████████ that Appellant will be accepted into ████████ if he does not consent. Appellant may leave the Facility sooner for any reason Appellant chooses to leave.

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
March 2, 2021


Ann Gayle
Administrative Law Judge

██████ / Ditmas

TO: ██████ ██████
c/o Ditmas Park Rehabilitation Center
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Brooklyn New York 11226

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