



Department of Health

ANDREW M. CUOMO
Governor

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

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

January 26, 2017

CERTIFIED MAIL/RETURN RECEIPT

Jake Hartstein, Administrator
The Grove at Valhalla
Rehab and Nursing Center
61 Grasslands Road
Valhalla, New York 10595

[REDACTED], Resident
c/o The Grove at Valhalla
Rehab and Nursing Center
61 Grasslands Road
Valhalla, New York 10595

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: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

**THE GROVE AT VALHALLA NURSING
AND REHABILITATION CENTER,**
Respondent,

to discharge him from a residential health care facility.

COPY
DECISION

A Notice of Transfer/Discharge, dated ██████████, 2016, was issued to ██████████
("Resident") by The Grove at Valhalla Nursing and Rehabilitation Center ("Facility"). The
Resident appealed the Facility's decision to transfer/discharge the Resident to the ██████████
Shelter and ██████████ on ██████████ 2016.

On ██████████, 2016, a hearing on the appeal was held before Denise Lepicier, Esq.,
Administrative Law Judge ("ALJ"). The Facility was represented by Jake Hartstein,
Administrator. The Resident, ██████████, represented himself.

The hearing was held in accordance with the Public Health Law of the State of New
York; Part 415 of Volume 10 of the New York Code of Rules and Regulations ("NYCRR"); the
New York State Administrative Procedure Act ("SAPA"); and 10 NYCRR Part 51.

Evidence was received. Witnesses were sworn or affirmed and examined. A recording
was made of the proceedings. The pre-transfer hearing was held at the Facility, at 61 Grasslands
Road, Valhalla, New York, pursuant to 10 NYCRR § 415.3(h)(2)(i)(b).

The following individuals were present during the hearing: [REDACTED], Resident; Raj Buddhavarapu, M.D.; Abe Cohen, Assistant Administrator; Justina Mante, Social Work; Deborah D'Orazio, Dietician; Zara Sanni, Licensed Practical Nurse; and Jake Hartstein, Administrator.

The following documents were admitted into evidence:

ALJ Exhibit I - Notice of Hearing and accompanying documents including the Transfer/Discharge notice from the Facility;

ALJ Exhibit II – Discharge Appeal Decision dated [REDACTED] 2016;

Facility Exhibit 1 – Notes from [REDACTED] Hospital regarding the Resident's recent admission;

Facility Exhibit 2 – Nutrition/dietary note dated [REDACTED]/17;

Facility Exhibit 3 – Nursing and Medication Administration progress notes;

Facility Exhibit 4 – [REDACTED] consult reports.

STATEMENT OF THE CASE

The Facility issued a notice of transfer/discharge to the Resident on [REDACTED], 2016. (ALJ Ex. I). The Facility alleged that the Resident's health has improved sufficiently so the Resident no longer needed the skilled nursing services provided by the Facility. (ALJ Ex. I) The Facility proposed that the Resident be transferred to a shelter in [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] on [REDACTED], 2016. The Resident disagreed with the Facility and appealed.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether the Resident's health has

improved sufficiently so the Resident no longer needs the services provided by the Facility and whether the discharge plan is appropriate. The Facility has the burden of proof on these issues. 10 NYCRR § 415.3(h)(2)(iii)(b).

FINDINGS OF FACT

The following findings of fact were made after a review of the entire record in this matter. Citations in parentheses refer to exhibits or testimony. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence was considered and rejected in favor of the cited evidence.

1. On December 6, 2016, this ALJ conducted a hearing regarding a prior transfer/discharge appeal involving the same parties on the same grounds. In the decision dated December 12, 2016, this ALJ concluded that the transfer/discharge of the Resident was warranted because the Resident “no longer needs the skilled nursing services of the Facility.” However, this ALJ also concluded that the proposed discharge location, the [REDACTED] shelter [REDACTED] was inappropriate and granted the Resident’s appeal. This ALJ takes judicial notice of her prior decision. (ALJ Ex. II)

2. The Resident, age [REDACTED] was admitted to The Grove at Valhalla from [REDACTED] Hospital on [REDACTED] 2016, with diagnoses including [REDACTED] of his [REDACTED] and [REDACTED], and [REDACTED]. The Resident was admitted to the facility for medical management in contemplation of surgery on his [REDACTED] (Testimony of Zara Sanni; Testimony of [REDACTED]; ALJ Ex. II)

3. The Resident is alert and oriented to person, place, time, and situation. He is able to make his needs known. (Testimony of Zara Sanni; Testimony of [REDACTED]; ALJ Ex. II;

Fac. Ex. 1)

4. The Resident can feed, groom, bathe, toilet and transfer himself independently.

The Resident is competent of both bowel and bladder. The Resident ambulates short distances in his room, but employs a wheelchair for most of his mobility due to his [REDACTED] condition.

(Testimony of Zara Sanni; Testimony of [REDACTED])

5. The Resident has refused ordered lab testing, medications, and services from individuals on the care team. He has been trained repeatedly with regard to his [REDACTED] diet, but does not comply. (Testimony of Raj Buddhavarapu; Testimony of Zara Sanni; Testimony of Deborah D'Orazio; ALJ Ex. II; Fac. Ex. 2; Fac. Ex. 3)

6. All the Residents diagnoses are illnesses capable of being managed in the community. (Testimony of Raj Buddhavarapu; Fac. Ex. 1) The Resident was recently switched to [REDACTED] to control his [REDACTED] and he received training at [REDACTED] Hospital and can [REDACTED] the medication himself. (Testimony of Raj Buddhavarapu; Testimony of Jake Hartstein)

7. The Resident continues to refuse to permit the Facility to communicate with his surgeon at the Hospital [REDACTED], and a third scheduled day for surgery [REDACTED] 3/16) was cancelled when the Resident did not pass his preoperative screening tests. (Testimony of Jake Hartstein; Testimony of [REDACTED])

8. The Resident had expressed a wish to his social worker to move to another skilled nursing facility. Inquiries were made to approximately twenty other facilities, but none of these facilities believed he had skilled nursing needs. (ALJ Ex. II; Testimony of Jake Hartstein)

9. One assisted living facility was identified which accepted Medicaid and was willing to offer the Resident a bed if he would permit an assessment at the assisted living facility.

The Resident refused to go for the assessment. (ALJ Ex. II)

10. The proposed discharge location is to a homeless shelter in [REDACTED] County.
(ALJ Ex. I)

11. The Resident has lived his entire life in [REDACTED] County. His last apartment was in [REDACTED]. He worked as a [REDACTED] for a [REDACTED] company. He testified that he would like to obtain housing in [REDACTED] County. He admits that he is currently homeless. (Testimony of [REDACTED]; ALJ Ex. II)

CONCLUSIONS

The documents from the Resident's record, the records from the Resident's recent admission to [REDACTED] Hospital, and the testimony of the Facility's witnesses support the conclusion that the Resident has no skilled nursing needs at this time. The Resident has no new date for his [REDACTED] surgery, and a skilled nursing facility is not the appropriate setting to await surgery. All the Resident's care needs can be provided in the community.

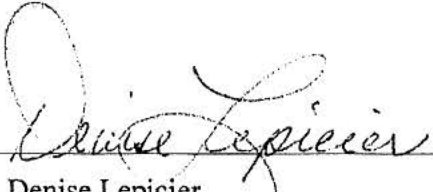
The [REDACTED] Shelter [REDACTED] is an appropriate discharge location for a person with no skilled nursing needs.

Based on a review of all of the evidence presented, I determine that the Facility has proved by substantial evidence that the proposed transfer or discharge of the Resident is appropriate because he no longer needs the skilled nursing services of the Facility pursuant to 10 NYCRR§415.3(h)(1)(i)(a)(2), and that the discharge plan is appropriate in the circumstances.

DECISION

1. The Appeal by the Resident, [REDACTED], is **DENIED**;
2. The Facility is authorized to transfer or discharge the Resident in accordance with the discharge notice; and
3. This Decision may be appealed to a court of competent jurisdiction pursuant to the New York Civil Practice Law and Rules; and
4. This Decision shall be effective on service on the parties by: (1) personal service, or (2) certified mail or (3) registered mail.

DATED: New York, New York
January 25, 2017


Denise Lepicier
Administrative Law Judge

To:

[REDACTED]
C/o Mr. Jake Hartstein
Administrator
The Grove at Valhalla Rehabilitation
and Nursing Center
61 Grasslands Road
Valhalla, New York 10595

Mr. Jake Hartstein
Administrator
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