



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

February 13, 2017

CERTIFIED MAIL/RETURN RECEIPT

Horacio Rodriguez, Social Worker
Eastchester Rehab and HCC
2700 Eastchester Road
Bronx, New York 10469

[REDACTED]
Eastchester Rehab and HCC
2700 Eastchester Road
Bronx, New York 10469

Barbara Phair, Esq.
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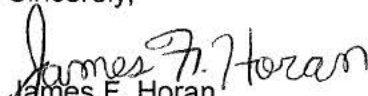
RE: In the Matter of [REDACTED] – Discharge Appeal

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: mw
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

**EASTCHESTER REHABILITATION AND HEALTH CARE
CENTER,**

Respondent,

to discharge him from a residential health care facility.

DECISION

A Discharge Notification, dated ██████████ 2017, was issued to ██████████, (“Appellant” or “Resident”) by Eastchester Rehabilitation and Health Care Center (“Respondent” or “Facility”). The Resident appealed the Facility’s proposed Transfer or Discharge. The pre-transfer Hearing was held on February 3, 2017, at the Facility, 2700 Eastchester Road, Bronx, New York, before Kimberly A. O’Brien, Esq., Administrative Law Judge (“ALJ”).

The Facility was represented by Barbara Stegun Phair, Esq. The Appellant appeared in person and testified on his own behalf. 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 United States Code of Federal Regulations (“CFR”) 42 CFR Subpart E (§§431.200 - 431.246) and 42 CFR Part 483; the New York State Administrative Procedure Act; and 10 NYCRR Part 51.

Evidence was received, witnesses were sworn or affirmed and examined. The ALJ made the notice of hearing and attached discharge notice part of the record (ALJ Ex. 1). The Facility offered only one exhibit (“Ex.1”); a one-page progress note dated [REDACTED] 17 stating that the Resident is medically stable and ready for discharge and that the apartment is an appropriate discharge location. The following individuals were present at the hearing: Barbara Stegun Phair, Esq., Facility Counsel; Inez Green, DSW; Horatio Rodriguez, Social Worker; Sandra Aponte, Nurse Supervisor; Livy Palmaira, Director of Rehabilitation; Dr. Roman, Attending Physician; [REDACTED] [REDACTED] Resident/Appellant; and [REDACTED], Resident/Appellant [REDACTED]

STATEMENT OF THE CASE

The [REDACTED] 2017 Notice of Transfer or Discharge indicates that pursuant to 10 NYCRR§415.3 (h)(1)(i)(a)(2) the health of the Resident has improved sufficiently so that he no longer requires the services provided by the Facility. The Facility made a determination to discharge the Resident from the Facility to Ms. Dacosta’s apartment (“apartment”), effective January 6, 2017 [ALJ Ex. 1]. The Resident is aware of the Facility’s assertions and appealed his discharge.

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 (Ex.) 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. The Resident, a [REDACTED]-year-old male, was admitted to the Facility on [REDACTED] 2016 [Ex 1].

2. The Resident is an [REDACTED] and was admitted from [REDACTED] after being treated for a wound infection of his "[REDACTED]." The Resident's diagnoses include diabetes and [REDACTED] [Testimony of Dr. Roman; Ex. 1].

3. The Resident is alert and oriented and can make his own decisions. He is able to ambulate with the assistance of a wheelchair, and he is independent with transfers, feeding, bathing, grooming, dressing and toileting. The Resident is also able to walk indoors, for relatively short periods of time, using his [REDACTED] and a [REDACTED] walker [Testimony of Ms. Aponte & Ms. Palmaira].

4. The Resident's medical condition is stable. Currently, the Resident has "[REDACTED] [REDACTED] wounds." The Resident has demonstrated that he is able to perform his own daily wound care which includes a "saline" wash, application of "hydrogel," and changing the dressing. In addition to wound care, the Resident is able to perform his own [REDACTED], and self-administer [REDACTED] and other medications. The Resident is able to schedule his own appointments including regular visits with his primary care physician and [REDACTED] surgeon, as well as visits to a wound care center and pain management clinic. These services are all available in the community on an outpatient basis [Testimony of Dr. Roman, Ms. Aponte, Ms. Palmaira & Mr. Rodriguez].

5. The apartment building has an elevator, and the apartment is wheelchair accessible [Testimony of Mr. Roskopf, Ms. Aponte, Ms. Palmaira & Mr. Rodriguez].

6. The Resident has been cleared for discharge to the apartment [Testimony of Dr. Roman, Ms. Aponte, Ms. Palmaira, Mr. Rodriguez; Ex. 1].

DISCUSSION

While the Resident has wounds they are [REDACTED] and given the Resident's comorbidities, he will often have wounds [FOF 2 & 3]. Dr. Roman testified that Resident's medical condition is stable and in his opinion the Resident can be safely discharged to the apartment. Admittedly, Dr. Roman has been the Resident's attending physician for only a short time. Dr. Roman testified that he based his opinion on his recent examination of the Resident, review of the Resident's medical record (including a review of the previous attending physician's notes and a recent report from Resident's [REDACTED] surgeon), and after conferring with Facility staff about the Resident's needs. [FOF 2 & 3, 4, 5 & 6].

The Resident wishes to remain at the Facility until he feels that he is able to be discharged. The Resident repeatedly stated that while he would like to be living out in the community with Ms. Dacosta, "he knows his body better than anyone else" and he is not ready to leave the Facility. The Resident believes that he needs more time to allow his wounds to heal, and that he needs more experience with using his [REDACTED] and with the [REDACTED] walker. He also believes that the constant pain he is having in his [REDACTED] has not been properly diagnosed.

Prior to commencing the hearing, there was extensive discussion about the proposed discharge and what services the Resident will require in the community. In anticipation of the Resident's discharge, Mr. Rodriguez has been working with the Resident and coordinating with Facility staff to secure a safe transition into the community. Mr. Rodriguez has assisted the Resident with applying for public transportation, [REDACTED] to transport him to appointments in the community, but it will take a "few weeks" to get the application approved. In the interim, a private transportation company has been identified and is available to meet his transportation needs. The Facility will discharge the Resident with a three-day supply of his

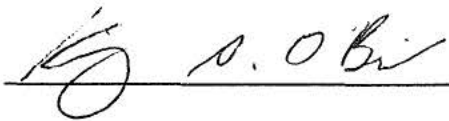
medications and prescriptions for a two-week supply of his medications, which will be delivered to the apartment. The Facility will also schedule follow up appointments including with the Resident's primary care physician¹, wound care clinic and pain management clinic. The day after the Resident's discharge, a visiting nurse will come to the apartment to assess his needs.

While the Resident is reticent to leave the Facility at this time, the Facility has shown that the Resident does not presently require the services the Facility provides and that the proposed discharge to the apartment is appropriate. The Facility proposed to discharge the Resident on [REDACTED], 2017, so that Facility staff are available to coordinate with the Resident and his care providers in the community. The Facility may discharge the Resident on or after [REDACTED] 2017 in accordance with the discharge notice.

ORDER

1. The Appeal by the Resident, [REDACTED], of his discharge/transfer is **denied**; and
2. The Facility may discharge the Resident, on or after [REDACTED], 2017, in accordance with the discharge notice; and
3. This Order may be appealed to a court of competent jurisdiction pursuant to the New York Civil Practice Law and Rules; and
4. This Order shall be effective on service on the parties.

DATED: Albany, New York
February 9, 2017


KIMBERLY A. O'BRIEN
Administrative Law Judge

¹ [REDACTED] testified that because the discharge is taking place in the "winter months" and the weather is often inclement, he will recommend that the Resident be provided with a home visit by a physician.

[REDACTED], Resident
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