



Department of Health

ANDREW M. CUOMO
Governor

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

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

April 26, 2017

CERTIFIED MAIL/RETURN RECEIPT

Ruslana Sigalova, Director of Social Work
Atrium Center for Rehab & Nursing
611 East 103rd Street
Brooklyn, New York 11236

[REDACTED], Resident
c/o Atrium Center for Rehab &
611 East 103rd Street
Brooklyn, New York 11236

Thomas J. Cone, Esq.
708 Third Avenue, 5th Floor
New York, New York 10017

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

COPY

**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

Atrium Center for Rehabilitation and Nursing,

Respondent,

to discharge her from a residential health care facility.

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Atrium Center for Rehabilitation and Nursing
611 East 103rd Street
Brooklyn, New York 11236

Hearing Date:

April 6, 2017

Parties:

Atrium Center for Rehabilitation and Nursing
By: Thomas J. Cone, Esq.
708 Third Avenue, 5th Floor
New York, New York 10017

[REDACTED]
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 Atrium Center for Rehabilitation and Nursing (“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(h). Respondent determined to discharge Christine Kelleher (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(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 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

A digital recording of the hearing was made and transferred to a compact disc (“CD”); the CD has become part of the record. Appellant testified for Appellant, and the following Facility representatives testified for Respondent: Orlando Carpio, MD—Medical Director, Ancy Rosemond, RN—Unit Supervisor, Zhanna Avizova—Director of Rehabilitation, Yelena Kruglyak—Social Worker, and Ruslana Sigalova—Director of Social Work. Also present at the hearing was

██████████ Atrium

the Facility's Administrator, Michael Schaffer. Thomas J. Cone, Esq. represented the Facility at the hearing.

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

ALJ:

I: Notice of Hearing with the Facility's Discharge Notice attached

Facility:

- 1: Dr. Carpio's ██████████ 17 progress note
- 2: PT and OT discharge summaries
- 3: Social Service progress notes

Resident:

- A: Resident's clinic appointments for ██████████ and ██████████ evaluations
- B: Financial documents

ISSUE

Has Atrium Center for Rehabilitation and Nursing established that the transfer is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony ("T") of witnesses and exhibits ("Ex") found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejected in favor of the cited evidence.

1. Respondent, Atrium Center for Rehabilitation and Nursing ("Atrium"), is a residential health care facility located in Brooklyn, New York. (Ex I)
2. Appellant, ██████████, age ██████████ was admitted to the Facility from the hospital on ██████████ 2017 for short-term rehabilitation to regain her strength. Appellant, who is alert and oriented and independent in all her ADLs (activities of daily living), currently receives no skilled care at the Facility. She was discharged from PT and OT (physical and occupational therapy) on

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██████████ 2017, when her highest practicable level of functioning was met. (Ex 2; Ex 3; T Carpio, Rosemond, Avizova)

3. By notice dated ██████████ 2017, Respondent advised Appellant that it had determined to discharge her on the grounds that her health has improved sufficiently so that she no longer needs the services provided by the Facility. (Ex I)

4. Appellant's past and present medical conditions include ██████████, and ██████████. These now stable conditions, as well as Appellant's possible need for ██████████ surgery in the future, can be treated in the community. (Ex 1; Ex A; T Carpio, Rosemond, Avizova, Kruglyak, Sigalova, Appellant)

5. Respondent's discharge plan is to transfer Appellant to the ██████████ Shelter ("Shelter") located at ██████████. (Ex I)

6. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's medical director, that discharge to the community, including the Shelter, is appropriate for Appellant who is very independent and capable of managing her medications and medical treatment. Appellant will be discharged with a ██████████, prescriptions for medications, and any remaining medications. Respondent will provide Appellant with transportation to the Shelter. (Ex 1; T Carpio, Rosemond, Avizova, Kruglyak, Sigalova)

7. Appellant has remained at Atrium pending the outcome of this proceeding.

DISCUSSION

Respondent's proposal to discharge Appellant pursuant to 10 NYCRR §415.3(h)(1)(i)(a)(2) is based on the ability of Appellant's stable medical conditions to be treated in the community and on her independence with her ADLs. The evidence presented by Respondent demonstrated that Appellant required short term rehabilitation upon admission in

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██████████ 2017, she completed those rehabilitative services in ██████████ 2017, and she no longer requires or receives skilled care.

Appellant, who is concerned that her ██████████ is not, and has not been, stable, questioned Dr. Carpio's choice of medication. Dr. Carpio explained his rationale for the medications he changed and prescribed since Appellant's admission. Both Dr. Carpio's testimony and Appellant's medical record reflected that Appellant's ██████████ and other medical conditions are stable and can be treated in the community, including a Shelter.

Appellant receives no skilled care at the Facility; she independently takes care of all her ADLs. Appellant's meals are served "██████████ soft" at Appellant's request, but Appellant eats the food she orders from the community without any special preparation. The nursing staff provides Appellant with her oral medications and ██████████ treatment, but Dr. Carpio and Ms. Rosamond testified that Appellant is capable of managing her medication, medical appointments, and ██████████ treatment in the community. Appellant ambulates with a ██████████ but she regularly walks on the unit and elsewhere in the Facility with no assistive devices, and she can climb more than █ steps at a time. Appellant can be evaluated for additional physical and other rehabilitative therapy in the community.

Ms. Kruglyak and Ms. Sigalova testified that discharge planning with and for Appellant included referrals to, and arranging appointments and meetings with representatives from, adult homes and assisted living facilities. ██████████ did not accept Appellant, but ██████████, ██████████, and ██████████ did. Appellant initially expressed interest in this type of setting as it would provide more independence especially with unescorted out-on-pass opportunities. Ultimately, however, Appellant rejected and did not follow through with these acceptances because she wants to manage her own finances and does not want her checks going

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housing for her, and she was adamant at the hearing that she would prefer to accept a Decision discharging her to the Shelter than explore adult homes or assisted living facilities.

CONCLUSION

I find that Respondent has proven that Appellant's health has improved sufficiently so that she no longer needs the services provided by the facility, and that the Shelter is an appropriate discharge plan. As such, this case will be resolved in favor of Respondent as sufficient improvement of health is an explicitly authorized reason for discharge, and an appropriate discharge location has been identified.

DECISION

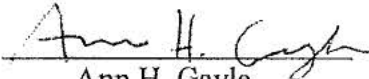
I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Atrium Center for Rehabilitation and Nursing, is authorized to discharge Appellant in accordance with its ██████████, 2017 discharge notice.

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
April 12, 2017


Ann H. Gayle
Administrative Law Judge

TO: Ruslana Sigalova, Director of Social Work
Atrium Center for Rehabilitation and Nursing
611 East 103 Street
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