

SAPA ✓



Department of Health

ANDREW M. CUOMO
Governor

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

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

July 13, 2017

CERTIFIED MAIL/RETURN RECEIPT

Ray Hunter, DSW
Barnwell Nursing and Rehab Center
3230 Church Street
Valatie, New York 12184

[REDACTED]
c/o Barnwell Nursing & Rehab Center
3230 Church Street
Valatie, New York 12184

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 *kh*
Bureau of Adjudication

JFH: *JFH*
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

CODV

-----X
 In the Matter of an Appeal, pursuant to :
 10 NYCRR § 415.3, by :
 [REDACTED] :
 :
 Appellant, :
 :
 from a determination by :
 :
 BARNWELL NURSING AND REHABILITATION CENTER :
 :
 Respondent, :
 :
 to discharge him from a residential health :
 facility :
 -----X

DECISION

A Notice of Transfer/Discharge, dated May 17, 2017, was issued to [REDACTED] [REDACTED] ("Appellant"), by Barnwell Nursing and Rehabilitation Center. The Appellant appealed the Facility's proposed discharge. On July 7, 2017, a hearing on the appeal was held before Dawn MacKillop-Soller, Administrative Law Judge, at Barnwell Nursing and Rehabilitation Center ("Respondent" or "Facility"), located at 3230 Church Street, Valatie, New York. The Appellant represented himself at the hearing. The Facility was represented by Angela C. Bellizzi, Esq.

Evidence was received and witnesses were sworn or affirmed and examined. An audio recording of the proceeding was made. Testimony was received from Rae Hunter, Director of Social Work, Marvin Perez, Rehabilitation Director, Jonathan Waldman, M.D., Medical Director,

the Appellant, Sherri Mier, R.N., Director of Nursing Services and Mary Lee from medical records.

The following documents were admitted into evidence:

ALJ Exhibit I - Resident Face Sheet

Facility Exhibit 1 - Notice of Discharge

Facility Exhibit 2 - Social worker progress notes

Facility Exhibit 3 - Rehabilitation progress notes

Facility Exhibit 4 - Medical note from Jonathan Waldman, M.D.

Appellant Exhibits A-B4 - Appellant's notes

Appellant Exhibit C - Mental status interview

Appellant Exhibit D - Appellant's Motion to Dismiss

STATEMENT OF THE CASE

The Facility made a determination to discharge the Appellant on the basis that the Appellant's health has improved sufficiently so that he no longer needs the services provided by the Facility. The discharge plan proposed that effective [REDACTED] 2017, the Appellant would be transferred to the [REDACTED] [REDACTED] [REDACTED] [REDACTED]'), located at [REDACTED] [REDACTED], [REDACTED]

[REDACTED] The Appellant opposed the discharge plan and appealed the discharge decision. The hearing was scheduled for June 13, 2017, but on the request of the Appellant, it was adjourned to June 29, 2017, and rescheduled to July 7, 2017, to accommodate the Facility's witnesses.

STATEMENT OF ISSUES

Has the Facility proven by substantial evidence that the Appellant's health has improved sufficiently so that he no longer needs skilled nursing care services and that its discharge plan is appropriate?

FINDINGS OF FACT

The citations in brackets refer to recording time frames where testimony was taken at the hearing or exhibits ["Ex."] and represent evidence found persuasive in arriving at a particular finding. The following findings of fact were made after a review of the entire record in this matter:

1. The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED] [REDACTED] 2016, for [REDACTED] term rehabilitative therapies following his involvement in a [REDACTED]. His diagnoses included [REDACTED] to his [REDACTED] [REDACTED] [REDACTED] and [REDACTED] and [REDACTED] of the [REDACTED] [REDACTED] [REDACTED]. He has a history of [REDACTED] [REDACTED] [REDACTED], [REDACTED] [REDACTED] and [REDACTED] [Ex. I; Recording @ 1:28, 49:02, 53:50].

2. The Appellant received occupational and physical therapies, which he completed on [REDACTED], 2016, and [REDACTED] 2017, respectively. The Appellant prefers to use a wheelchair for "safety" purposes, but is without medical restrictions for weight bearing. He is capable of walking independently for short distances

and freely ambulates in a wheelchair in and out of the Facility.

[Ex. 3; Recording @ 1:00:57, 1:02:17, 1:04:25-1:04:38].

3. The Appellant does not have any cognitive limitations and manages his own medications, including daily pills for [REDACTED] and [REDACTED] [Recording @ 13:49, 15:25, 44:45, 56:54, 57:39, 4:47].

4. The Facility determined that the Appellant has met his treatment goals and is independent with his activities of daily living. [Ex. 3; Recording @ 43:10, 1:07:18-1:08:22].

5. The Facility's proposed discharge plan is to transfer the Appellant to the [REDACTED] [REDACTED] [REDACTED], located at [REDACTED] [REDACTED] [REDACTED]. [Ex. 1].

6. The Appellant refuses skilled nursing care and evaluations from medical staff, yet is desirous of staying at the Facility and opposes the discharge plan. He testified that the transfer plan is not appropriate due to his weight bearing difficulties. [Ex. 4; Recording @ 4:35-5:04, 13:31, 43:10-43:22, 46:07-46:45; 51:28, 52:39, 53:33].

7. The Appellant's care team at the Facility and the Facility's Medical Director, Jonathan Waldman, M.D., conclude that the Respondent's discharge plan is safe and appropriate. The physician testified to his opinion based on his observations of the Appellant, a review of the medical records and discussions with Facility staff. [Ex. 3; Recording @ 42:37, 43:36, 45:24, 1:04:53].

APPLICABLE LAW

1. The hearing was held in accordance with Article 28 of the Public Health Law of the State of New York; Part 415 in Volume 10 of the Official Compilation of Codes, Rules and Regulations ("NYCRR"); Part 483 of the United States Code of Federal Regulations ("CFR"); the New York State Administrative Procedure Act ("SAPA"); and 10 NYCRR Parts 51 and 415. The Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate. 10 NYCRR 415.3(h)(2)(iii).

2. Pursuant to 10 NYCRR 415.3(h)(2), a resident has the right to challenge a nursing home's transfer or discharge plan.

3. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(h). It 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;

ANALYSIS AND CONCLUSIONS

The Facility proved by substantial evidence that the Appellant's health has improved sufficiently so he no longer needs skilled nursing care services and that its discharge plan to transfer the Appellant to the [REDACTED] [REDACTED] is appropriate. The Appellant was admitted to the Facility following injuries he sustained after he was [REDACTED] by a [REDACTED] on [REDACTED] [REDACTED] 2016. The Facility's evidence established that in addition to managing his own medications and his independence in his activities of daily living, the Appellant has reached his maximum level of improvement and independence and achieved his rehabilitation goals. The Facility's Medical Director and the interdisciplinary care team unanimously agree that he no longer requires skilled nursing care. [Ex. 2, 3; Recording @ 16:12, 43:42-44:08, 44:22, 1:02:17, 1:02:38, 1:03:24, 1:03:50, 1:16:29-1:16:49, 1:17:45, 2:35, 4:10].

The Appellant opposes the discharge and argues that he requires the Facility's skilled nursing services - the same care that he routinely refuses - because he claims that he is "not weight bearing." This argument is unpersuasive because it is contrary to the evidence, which confirmed that the Appellant was medically cleared by the Facility's Medical Director for weight bearing. Indeed, Mr. Perez, the Facility's Rehabilitation Director, testified that the Appellant ambulates independently by taking "[REDACTED]" and using a wheelchair as "an assistive device," activities that he

completes without difficulty or assistance. While the Appellant claims that he may require a future surgery to his [REDACTED] skilled nursing home care does not hinge on a procedure that might occur sometime in the future. [Ex. 3; Recording @ 53:33, 1:05:18, 1:10:28, 1:12:29, 1:14:12, 1:14:31-1:14:42, 1:18:31-1:19:02, 1:18, 1:31, 20:49].

In considering the Appellant's personal circumstances, which do not include an existing home or a caretaker in the community, the Appellant's care team agree that his needs, which are uncomplicated and involve [REDACTED] [REDACTED] abnormalities, can be satisfied at the [REDACTED]. The Appellant's steady refusal to receive any care from the Facility staff members - or to interact with them at all - suggests that the transfer to the [REDACTED] may not only improve his quality of life, but provide him with the opportunity for further rehabilitation services on an outpatient basis. [Ex. I; Recording 19:09-20:10, 44:33].

Based on a review of all of the evidence presented, I find the Facility's determination to discharge the Appellant appropriate because the Facility has proven by substantial evidence that the Appellant's condition has improved sufficiently so that he no longer needs skilled nursing services. I also find the discharge plan to transfer him to the [REDACTED] [REDACTED] appropriate. The Facility is authorized to transfer the Appellant in accordance with its discharge plan on or after [REDACTED], 2017.

The Appellant's submitted request after the hearing for my recusal is denied on the basis that there is no bias here. The Appellant's Motion to Dismiss is also denied. The Notice of Discharge was properly served on the Appellant, thereby establishing jurisdiction, and the evidence showed that the Facility complied with the Appellant's requests to provide him with a complete copy of his medical record in compliance with 10 NYCRR 415.3(c)(1)(iv) and prior to the hearing. [Ex. 1, D; Recording @ 9:03-9:07, 14:39, 15:18, 18:22, 29:46, 31:12-18, 17:15].

DECISION AND ORDER

1. The Facility is authorized to discharge the Appellant to the [REDACTED] in accordance with its discharge plan or after [REDACTED] [REDACTED] 2017;
2. This decision shall be effective upon service on the parties by facsimile transmission, personal service or by certified or registered mail;
3. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules.

Dated: Albany, New York
July 12, 2017


DAWN MacKILLOP-SOLLER
Administrative Law Judge

To:

██████████
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3230 Church Street
Valatie, New York 12184

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