



Department of Health

ANDREW M. CUOMO
Governor

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

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

September 14, 2017

CERTIFIED MAIL/RETURN RECEIPT

Sharim Anderson-Foster
Assistant Director of Social Work
Bay Park Center for Nursing & Rehab
801 Co-op City Boulevard
Bronx, New York 10475

██████████
c/o Bay Park Center for Nursing & Rehab
801 Co-op City Boulevard
Bronx, New York 10475

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: *JFH*
Enclosure

**STATE OF NEW YORK
DEPARTMENT OF HEALTH**

COPY

8-25-17

In the Matter of an Appeal pursuant to
10 NYCRR §415.3 by

[REDACTED]

Appellant,

from a determination by

Bay Park Center for Nursing & Rehabilitation,

Respondent,

to discharge him from a residential health care facility.

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Bay Park Center for Nursing & Rehabilitation
801 Co-op City Boulevard
Bronx, New York 10475

Hearing Dates:

August 9, 2017
August 25, 2017

Parties:

Bay Park Center for Nursing & Rehabilitation
By: Barbara Phair, Esq.
Abrams, Fensterman, *et al.*

[REDACTED] [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 Bay Park Center for Nursing & Rehabilitation ("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 █ ("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 appeared and testified on his own behalf. Barbara Phair, Facility's attorney, called and examined witnesses for Respondent. The following Facility representatives testified for Respondent: Sharmin Anderson-Foster—Assistant Director of

Bay Park

Social Work, Joan Bryan–Social Worker, and Bredy Pierre-Louis, MD¹–Primary Care Physician. The following Facility representatives were also present at the August 9, 2017 hearing: Jong Ok Lee–Nurse Practitioner, Stephen Schink, R.N.–Nurse Manager, and Elder Berry Crum-Ewing–Occupational Therapist.

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

ALJ:

1: Notice of Hearing and attached Facility Discharge Notice

Facility:

- 1: Physician note
- 2: PT discharge summary
- 3: OT discharge summary [REDACTED] /17
- 4: OT discharge summary [REDACTED] /17
- 5: Social Services progress notes

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

ISSUE

Has Bay Park Center for Nursing & Rehabilitation 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.

1. Respondent, Bay Park Center for Nursing & Rehabilitation (“Bay Park”), is a residential health care facility located in Bronx, New York. (Ex 1)

Appellant, [REDACTED], age [REDACTED] was admitted to the Facility from [REDACTED] Hospital

[REDACTED] on [REDACTED] 2017 for short-term rehabilitation. Appellant completed

¹ Following Dr. Pierre-Louis’ unsworn testimony which was taken on a recorded conference call on August 25, 2017, an 8-page document containing a note by Dr. Pierre-Louis, a consultation report of Dr. Khan, and [REDACTED] results was faxed by Respondent, with Appellant’s consent, to the ALJ. This document is part of the record.

occupational and physical therapy, and his condition is stable. Appellant's medical conditions can be treated in the community. (T Pierre-Louis, Appellant)

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

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

4. It is the professional opinion of Appellant's caregivers at the Facility, including Appellant's Facility attending physician, that discharge to the community, including the Shelter, is appropriate for Appellant. The Shelter will provide Appellant assistance with acquiring permanent housing, food stamps, and a source of income. (T Anderson-Foster)

5. Appellant has remained at Bay Park pending the outcome of this proceeding.

DISCUSSION

Appellant agrees with Respondent's determination that he no longer requires skilled care and that his medical care and treatment can be obtained in the community on an out-patient basis. With such acknowledgement by Appellant, the only issue left for this Decision is whether the discharge location, *i.e.*, the Shelter, is an appropriate discharge plan.

Appellant would like to remain in the Facility until he has permanent housing or more assurance that he will not be relocated within the Shelter system before permanent (or "permanent temporary") housing is secured. Appellant is concerned that his condition will deteriorate and his health will be jeopardized if he is moved from one temporary location to another within the Shelter system or if he is required to leave the temporary shelter during daylight hours. Respondent believes that because of Appellant's disabilities, he would not be

moved from one temporary location to another or required to leave the temporary shelter during daylight hours.

Although Assisted Living placement was explored, and Appellant and Respondent worked together on applications for housing and for income such as SSI/SSD, Appellant testified that he was not satisfied with the manner in which Respondent handled his discharge planning. Appellant believed too much was left to him with not enough support from Respondent. The Shelter was identified as a last resort, and Ms. Bryan testified that seeking permanent housing while in the Shelter would provide a better opportunity for Appellant to secure permanent housing than if he did so while he continued residing in the Facility because residing in the Shelter demonstrates that the person is homeless and needs permanent housing.

Appellant would not agree to be discharged to the Shelter unless he was given specific details of the type of setting where he would reside, whether it was temporary and subject to frequent or any relocation until permanent shelter or housing was secured, and whether he would need to leave that temporary setting each morning. The Parties agreed, during the course of the August 9, 2017 hearing date, to continue to work together to seek housing, and to contact the Shelter together to seek more specific details on the process and logistics of where Appellant would be placed both temporarily and permanently. Additionally, Appellant was going to meet with Dr. Bredy Pierre-Louis and Dr. Samaira Khan subsequent to the August 9 hearing date to discuss pain management, MRI findings, and what, if any, additional treatment was needed. Conference calls were scheduled and held on August 21, August 25, and September 11, 2017, to address these concerns.

Unfortunately, the Shelter system cannot make any promises or assurances regarding where Appellant would be placed temporarily or permanently, or how long the process will take.

██████ / Bay Park

Those determinations cannot be made until Appellant arrives at the Shelter and is assessed and evaluated.

CONCLUSION

Sufficient improvement of health is an explicitly authorized reason for discharge. Appellant has agreed that his health has improved sufficiently so that he no longer needs the services provided by the facility, and Respondent has proven that the Shelter is an appropriate discharge plan. Once in the Shelter system, Appellant will have a case manager who will assist him with seeking medical, housing, income, and other services.

DECISION

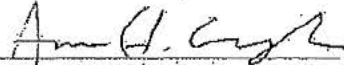
I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Bay Park Center for Nursing & Rehabilitation, 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
September 14, 2017


Ann H. Gayle
Administrative Law Judge

TO: Sharmin Anderson-Foster
Assistant Director of Social Work
Bay Park Center for Nursing & Rehabilitation
801 Co-op City Boulevard
Bronx, New York 10475

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