



Department of Health

ANDREW M. CUOMO
Governor

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

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

October 2, 2017

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Brookhaven Rehabilitation & Health Care Center
250 Beach 17th Street
Far Rockaway, New York 11691

Barbara Phair, Esq.
Abrams, Fensterman
3 Dakota Drive, Suite 300
Lake Success, New York 11042

Latisha Paret, Director of Social Services
Brookhaven Rehabilitation & Health Care Center
250 Beach 17th Street
Far Rockaway, New York 11691

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: ISM
Enclosure

**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

Brookhaven Rehabilitation & Health Care Center,

Respondent,

to discharge her from a residential health care facility.

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Brookhaven Rehabilitation & Health Care Center
250 Beach 17th Street
Far Rockaway, New York 11691

Hearing Date:

September 20, 2017
The record closed on September 28, 2017

Parties:

Brookhaven Rehabilitation & Health Care Center
By: Barbara Phair, Esq.
Abrams, Fensterman, *et al.*

[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 Brookhaven Rehabilitation & Health Care Center (“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 Lita Loudlar (“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 at the hearing and testified on her own behalf. Barbara Phair, Esq., Facility’s attorney, called and examined witnesses for Respondent. The following Facility representatives testified for Respondent: Adeola Uthman, MD—Attending Physician, Regina DeLeon—Director of Rehabilitation, Adela G. Castaneda, RN—Nursing

Supervisor, and Latisha Paret–Director of Social Work. Also present at the hearing were Joseph Brenden–Administrator and Antoinette Bethune–Social Worker.

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

ALJ:

- I: Notice of Hearing with the Facility’s Discharge Notice attached
- II: Letter dated █ 2017

Facility:

- 1: Physician progress note dated █ 17
- 2: MDS form

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

ISSUE

Has Brookhaven Rehabilitation & Health Care Center 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. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

- 1. Respondent, Brookhaven Rehabilitation & Health Care Center, is a residential health care facility located in Far Rockaway, New York. (Ex I)
- 2. Appellant, age █ was admitted to the Facility from █ Hospital on █ 2014, for medical treatment and rehabilitation. Appellant ambulates with a █ walker, and she is alert and oriented and independent in her ADLs (activities of daily living). Appellant’s medical conditions can be addressed in the community. (Ex 1; Ex 2; T Uthman, DeLeon, Castaneda)

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. Respondent's discharge plan is to transfer Appellant to the ██████████
██████████ ("Shelter") located at ██████████. (Ex I)
5. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's attending physician, that discharge to the community, including the Shelter, is appropriate for Appellant. Appellant will be discharged with a ██████████ walker or ██████████ or wheelchair, a shower chair, and prescriptions for medications. Respondent will provide Appellant with transportation to the Shelter. (Ex 1; T Uthman, DeLeon, Castaneda, Paret)
6. Appellant has remained at Brookhaven Rehabilitation & Health Care Center pending the outcome of this proceeding.

DISCUSSION

The evidence presented by Respondent demonstrates that Appellant completed her rehabilitative services, she is independent with her ADLs, her condition is stable, and her medical conditions can be treated in the community.

Appellant does not wish to be discharged to the Shelter. Appellant would like to remain at the Facility to receive additional rehabilitation; she believes that her conditions such as ██████████
██████████ unsteady gait, ██████████ and ██████████ render her not ready for discharge at this time. Ms. Castaneda testified that the Facility has addressed all of these concerns/issues. Appellant was seen by an ophthalmologist who determined that Appellant needed corrective lenses for her ██████████, but Appellant refused to be seen by the optometrist who visited her at the Facility. Ms. Castaneda further testified that Appellant's vital signs were normal following

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her complaints of ██████ and ██████ Appellant receives no skilled care at the Facility, she makes all her own decisions, and she is independent with her ADLs. Dr. Uthman testified that Appellant is medically stable, and it is safe to discharge her to the community, including the Shelter.

It is undisputed that Appellant has ██████ issues. While Ms. Paret attempted to assist her, Appellant indicated that she is addressing these issues on her own. Due to Appellant's ██████, she does not have a source of income. Without an income, independent living and assisted living placements are not options for Appellant. Respondent identified the Shelter placement as a last resort. The Shelter will assist Appellant with finding housing, medical care and income.

Appellant revealed at the hearing that her ██████, who lives in ██████ ██████ indicated that Appellant could live with her. At Appellant's request, ██████ was contacted, and she participated in the latter part of the hearing by telephone. ██████ ("Appellant's ██████ reported that she is not able to have Appellant live with her at this time, but that she and other family members have been urging Appellant to return to the ██████ where Appellant's family members, especially Appellant's ██████ and ██████ would welcome Appellant living with them.

While Appellant clearly stated that no one, including her family, could dictate where she should live, she did want her ██████ to participate in our discussion regarding her living with family. A conference call was scheduled for September 22, 2017, to give Appellant, Appellant's ██████ and the Facility's social workers the opportunity to communicate with Appellant's ██████ and other family members about a discharge plan for Appellant.

Appellant very much wanted her ██████████ to be on the conference call, but he could not be reached for the September 22 conference call, therefore, another conference call was scheduled for September 28, 2017. Appellant's ██████████ and ██████████ were on that call along with Facility representatives and Philip Hammarberg, Esq., of Abrams, Fensterman, but Appellant refused to participate in the call. Appellant's ██████████ requested that if the ALJ was going to issue a decision allowing the Facility to discharge Appellant to the Shelter, that it not be immediately enforceable. Appellant's ██████████ also requested that the family be provided with a copy of the decision in this matter. The ALJ then directed Respondent and its counsel to review Appellant's chart to determine whether or not Appellant has a representative and, if so, to determine whether or not Respondent can give a copy of the decision to Appellant's representative without Appellant's consent, in the event Appellant does not consent.

Appellant receives no skilled care at the Facility, she makes all her own decisions, and she is independent with her ADLs. The Shelter will assist Appellant with services such as housing, medical needs and evaluations.

Respondent has proven that Appellant's health has improved sufficiently that she no longer requires skilled care, and that the Shelter is an appropriate discharge location for Appellant.

DECISION

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

The appeal by Appellant is therefore DENIED.

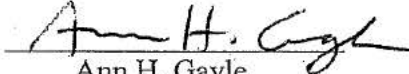
Respondent, Brookhaven Rehabilitation & Health Care Center, is authorized to discharge Appellant, ██████████, on or after ██████████ 2017, in accordance with its ██████████ 2017

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discharge notice. Appellant is not required to go to the Shelter, and she may choose to leave the Facility of her own accord; but she must leave the Facility on or before October 18, 2017.

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
October 2, 2017


Ann H. Gayle
Administrative Law Judge

TO: ██████████
c/o Brookhaven Rehabilitation & Health Care Center
250 Beach 17th Street
Far Rockaway, New York 11691

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