



Department of Health

ANDREW M. CUOMO
Governor

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

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

March 29, 2018

CERTIFIED MAIL/RETURN RECEIPT

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

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

[REDACTED]
C/o Bay Park Center for Nursing & Rehabilitation
801 Co-op City Boulevard
Bronx, New York 10475

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 / CAE
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
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

Bay Park Center for Nursing & Rehabilitation,

Respondent,

to discharge him from a residential health care facility.

COPY

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 Date:

March 23, 2018

Parties:

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



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 was made part of the record. Appellant appeared and testified on his own behalf. Barbara Phair, Esq., Facility’s attorney, called and examined the following witnesses for Respondent: Mandeep K. Singh, MD—Attending Physician, Grace Bonus—Physical Therapist, Stephan Schink, R.N.—Nurse Manager, Joan Bryan—Social Worker, and Sandra Berkoh—Social Worker █

█ Ombudsman, was also present 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 and attached Facility Discharge Notice

Facility:

- 1: Physician note
- 2: OT note and PT discharge summary
- 3: Social Services progress notes
- 4: Fax cover sheets, confirmations, and notes re discharge locations
- 5: [REDACTED] 17 Social Services progress note
- 6: [REDACTED] 18 Social Services progress note

Resident:

- A: Business cards and information regarding community housing

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 I)
2. Appellant, [REDACTED] age [REDACTED] was admitted to the Facility from [REDACTED] Medical Center on [REDACTED] 2015, for rehabilitation. Appellant completed occupational and physical therapy, and his condition is stable. Appellant’s medical conditions can be treated in the community. (T Singh, Bonus, Schink, Bryan, Appellant)

Bay Park

3. By notice dated [REDACTED], 2018, 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)
4. Respondent's discharge plan is to transfer Appellant to the [REDACTED] Shelter ("Shelter") located at [REDACTED] (Ex I)
5. It is the professional opinion of Appellant's caregivers at the Facility, including Appellant's attending physician, that discharge to the community, including the Shelter, is appropriate for Appellant. The Shelter will provide Appellant assistance with acquiring permanent housing. (Ex 1; T Singh, Bonus, Schink, Bryan)
6. 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. 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 a discharge location other than the Shelter. Appellant testified that he will not go to the Shelter.

Respondent provided Appellant with referrals to Room Finders and NYC Human Resources Administration for assistance in locating community housing. Additionally, placement in Adult Home and Assisted Living settings, including [REDACTED] Assisted Living [REDACTED]

[REDACTED] Assisted Living, [REDACTED]

[REDACTED] Home for Adults

[REDACTED], was explored. Appellant testified that he refused [REDACTED] because he found the conditions, which included holes in the floors, peeling paint on the walls, roaches,

and a foul odor, to be deplorable. The other facilities did not work because either they refused to accept Appellant, they did not respond to Ms. Bryan, or Appellant refused to visit and/or complete the application process.

The Shelter was identified as a last resort. Appellant would be discharged from the Facility with a new rollator, his remaining medications and new prescriptions, and a follow-up medical appointment at Hospital. The Shelter would place Appellant in a setting appropriate for his needs. A social worker would be assigned to Appellant and would assist Appellant with finding permanent housing and obtaining other services he might need.

The Parties agreed to continue to work with each other toward seeking discharge to an assisted living or adult home. The Parties will be given additional time to explore discharge locations appropriate for Appellant.

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 social worker who will assist him with seeking medical, housing, and other services.

DECISION

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

The appeal by Appellant is therefore DENIED.

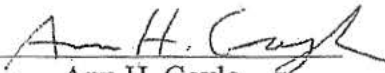
Respondent, Bay Park Center for Nursing & Rehabilitation, is authorized to discharge Appellant in accordance with its 2018 discharge notice. The discharge shall occur no sooner than 2018. Appellant may leave the Facility sooner

[REDACTED] / Bay Park

that [REDACTED] 2018, if housing suitable and acceptable to him is secured prior to that date or for any other reason Appellant chooses to leave.

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
March 27, 2018


Ann H. Gayle
Administrative Law Judge

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

[REDACTED]
c/o Bay Park Center for Nursing & Rehabilitation
801 Co-op City Boulevard
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