



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 6, 2018

CERTIFIED MAIL/RETURN RECEIPT

Meg Bondy, Director of Social Services
The New Jewish Home, Manhattan
120 West 106th Street
New York, New York 10025

[REDACTED]
C/o The New Jewish Home, Manhattan
120 West 106th Street
New York, New York 10025

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

JFH: cac
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

-----X
 In the Matter of an Appeal, pursuant to :
 10 NYCRR § 415.3, by :
 [REDACTED] :
 Appellant, :
 from a determination by :
 THE NEW JEWISH HOME/ MANHATTAN DIVISION :
 Respondent, :
 to discharge her from a residential health :
 care facility. :
 -----X

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DECISION

The New Jewish Home/ Manhattan Division ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED] 2018, to [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On April 4, 2018, a hearing was held before WILLIAM J. LYNCH, ESQ., ADMINISTRATIVE LAW JUDGE.

The hearing was held in accordance with the Public Health Law of the State of New York; Part 415 in Volume 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"); Part 483 of the United States Code of Federal Regulations ("CFR"); the New York State Administrative Procedure Act ("SAPA"); and 10 NYCRR Part 51.

Evidence was received and witnesses were examined. An audio recording of the proceeding was made. The hearing was held at the Facility located at 120 West 106th Street, New York, New York. The

following individuals were present for the hearing: [REDACTED]
Resident; [REDACTED] friend of the Resident; Sonya Choudry,
Nurse Practitioner; Meg Bondy, Director of Social Work; and Mahbuba
Khatun, M.D.

STATEMENT OF THE CASE

The Facility issued a determination proposing to discharge the Resident effective [REDACTED] 2018. The stated reason for the discharge was that the Resident's health had improved sufficiently so that she no longer required the services provided by a skilled nursing facility. The proposed discharge location was the Resident's apartment at [REDACTED]. The Resident filed a timely request for an appeal of the discharge decision and has remained in the Facility pending this determination.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether the Facility has established a basis which permits the Resident's discharge from the Facility and whether the proposed discharge plan is appropriate. The Facility has the burden of proving its

case by substantial evidence (10 NYCRR § 415.3[h][2][iii], SAPA § 306[1]).

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Citations in parentheses refer to testimony or exhibits. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. The Resident is a [REDACTED] year-old female who was admitted to the Facility in [REDACTED] 2016, for [REDACTED] term rehabilitation. (Facility 3; Recording @ 6:50).

2. The Resident has made significant rehabilitation progress while at the Facility. She is now able to ambulate independently and perform all activities of daily living. (Facility 4; Recording @ 15:00).

3. The Facility's interdisciplinary care team determined that the Resident no longer required skilled nursing services and could safely be discharged. (Facility Ex. 1).

4. The Resident's attending physician determined that the Resident was medically stable and agreed with the discharge plan. (Facility Ex. 2; Recording @46:55).

5. On [REDACTED] 2018, the Facility issued a discharge notice to the Resident which proposes discharge to her apartment. (Facility Ex. 1).

ANALYSIS AND CONCLUSIONS

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR 415.3[h][1]). The Facility alleged that the Resident's discharge is permissible pursuant to 10 NYCRR 415(h)(1)(i)(a)(2), which states:

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.

The Facility established through testimony and documents that there is no reason for the Resident to remain in a skilled nursing facility and that the Resident's medical conditions can be managed on an outpatient basis. After completing a program of rehabilitation, the Resident can independently perform all activities of daily living.

The Resident stated that she needs to further prepare her apartment before returning. She wanted to move some of her belongings into a storage space in her building because her apartment is small, but the management told her that none are currently available. She also explained a recent incident where she called 911 and was brought to the emergency room at the hospital. The Resident acknowledged that she is [REDACTED] about leaving the Facility and would like additional time to prepare her apartment.


Based upon the evidence produced at the hearing, I find that the Resident no longer needs to reside in a skilled nursing facility and that she can obtain any required follow-up medical care on an outpatient basis while living in the community. The Resident acknowledged that she has an ongoing relationship with medical care providers and is able to access medical care in the community including the [REDACTED] Rehabilitation which is very close to her apartment building. The Facility agreed to assist the Resident in arranging for follow up services in the community which can provide [REDACTED] support as she transitions back to her apartment.

DECISION AND ORDER

1. The Facility is authorized to discharge the Resident in accordance with its discharge plan on or after Wednesday, [REDACTED], 2018.

2. 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: Albany, New York
April 6, 2018


WILLIAM J. LYNCH
Administrative Law Judge