



Department of Health

ANDREW M. CUOMO
Governor

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

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

May 2, 2018

CERTIFIED MAIL/RETURN RECEIPT

Ms. Carmen E. Jule, Esq.
Garfunkel Wild, P.C.
11 Great Neck Road,
Suite 600
Great Neck, New York 11021

[REDACTED] Resident
Bainbridge Nursing and Rehab
3518 Bainbridge Avenue
Bronx, New York 10467

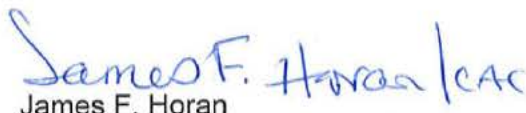
RE: In the Matter of [REDACTED] – Discharge Appeal

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
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

**Bainbridge Nursing and
Rehabilitation Center**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION

Hearing Before: Natalie J. Bordeaux,
Administrative Law Judge

Held at: Bainbridge Nursing and Rehabilitation Center
3518 Bainbridge Avenue
Bronx, New York 10467

Hearing Date: April 20, 2018
The record closed April 30, 2018

Parties: Bainbridge Nursing and Rehabilitation Center
By: Carmen E. Jule, Esq.
Garfunkel Wild, P.C.
11 Great Neck Road, Suite 600
Great Neck, NY 11021



P. O. 36

JURISDICTION

By notice dated [REDACTED] 2018, Bainbridge Nursing and Rehabilitation Center (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (the Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(h).

HEARING RECORD

Facility witnesses: Marion Clutehker, Director of Social Work
Stephanie Mack, Director of Nursing
Tibu C. Tharakan, Physical Therapist

Facility exhibits: 1-5

Appellant witnesses: [REDACTED] Appellant
[REDACTED] Appellant's [REDACTED]

The notice of hearing, discharge notice, and the accompanying cover letter were marked as ALJ Exhibit I. A digital recording of the hearing was made.

ISSUES

Has Bainbridge Nursing and Rehabilitation Center established that its determination to discharge the Appellant was correct and that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED] year-old male who was admitted to the Facility on [REDACTED] 2017 for [REDACTED] term rehabilitation after undergoing [REDACTED] at [REDACTED] Medical Center. (Facility Exhibits 2 and 3.)

2. The Appellant's admitting diagnoses were [REDACTED] [REDACTED] extremity [REDACTED] (Facility Exhibit 3.)

3. By notice dated [REDACTED] 2018, the Facility determined to discharge the Appellant on [REDACTED] 2018 because his health has improved sufficiently that he no longer requires skilled.

nursing care. The notice proposes to discharge the Appellant to the [REDACTED] Shelter, the

[REDACTED] (Facility Exhibit 5; ALJ Exhibit L)

4. The Appellant does not require skilled nursing care, and performs all activities of daily living independently. (Facility Exhibits 2 and 3.)
5. The Appellant's clinical record contains documentation from the Appellant's physician and interdisciplinary care team that the Appellant's needs can be met in the community, and that discharge to the shelter is appropriate. (Facility Exhibits 2 and 3.)
6. The Appellant remains at the Facility pending the outcome of this appeal.

APPLICABLE LAW

A residential health care facility (also referred to in the regulations as a nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. Public Health Law §§2801(2)-(3); 10 NYCRR § 415.2(k).

Department regulations at 10 NYCRR § 415.3(h) describe the transfer and discharge rights of residential health care facility residents. They state, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility:

(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;

The residential health care facility must prove by substantial evidence that the discharge was necessary, and the discharge plan appropriate. 10 NYCRR § 415.3(h)(2)(iii); State Administrative Procedure Act § 306(1).

DISCUSSION

The Appellant was admitted to the Facility from [REDACTED] Hospital on [REDACTED] 2017 for [REDACTED] term rehabilitation after [REDACTED]. His admitting diagnoses were [REDACTED] [REDACTED] extremity [REDACTED]. The Appellant is also diagnosed with the following medical conditions which were not the basis for his admission to the Facility:

[REDACTED] (Facility Exhibits 2 and 3.)

The Appellant's medical conditions are now stable and require neither medical nor skilled nursing intervention. (Recording @ 11:57.) The Appellant has reached his prior level of physical function. He is capable of independently performing all activities of daily living, including transferring, bed mobility, and ambulation. (Recording @ 14:44.) The Appellant has completed all prescribed occupational and physical therapies. The Facility currently provides medication to the Appellant which he may also obtain in the community. (Facility Exhibits 3 and 4; Recording @ 12:58.)

Dr. Mallapu, the Appellant's attending physician at the Facility, has determined that the Appellant may be safely discharged. Practitioners in other disciplines, including nursing, social work, and rehabilitation, also agree that the Appellant does not require specialized services from the Facility. (Facility Exhibits 2 and 3; Recording @ 11:57; 15:50.) The Appellant is not

contesting the Facility's determination that he does not require services provided by a skilled nursing facility. (Recording @ 44:40.)

The Facility proposes to discharge the Appellant to a [REDACTED] shelter, a discharge plan which Dr. Mallapu concluded is safe and appropriate. (Facility Exhibit 3.) The Appellant objects to the Facility's discharge plan because he fears that his dependence on a [REDACTED] for walking makes him [REDACTED] shelter. (Recording @ 44:40.)

The Appellant does not have a home in the community, and his only source of income is Public Assistance benefits. Before considering shelter placement, Ms. Clutchker, the Director of Social Work, reviewed the eligibility criteria of local housing programs for low-income individuals with medical needs. She found that the Appellant is financially ineligible for low-income housing. (Recording @ 38:00.) The Appellant has not succeeded in finding housing for himself. He confirmed that his lack of income seriously restricts his housing options. (Recording @ 29:00.)

The Appellant's [REDACTED], is a [REDACTED]. Although she also expressed concern for the Appellant's safety at the shelter [REDACTED] location, she did not contest the Appellant's ability to be discharged to the shelter [REDACTED]. She contended that the Facility completed the shelter referral form incorrectly because a separate form alerts [REDACTED] that the Appellant requires special medical accommodations, thereby enabling the Appellant to bypass the intake process. (Recording @ 47:15.) [REDACTED] had not previously raised this issue with Ms. Clutchker, and failed to explain how this information would enable the Appellant to avert shelter placement.

Ms. Clutchker did submit the form described by the Appellant [REDACTED] along with the shelter referral form. The [REDACTED] medical questionnaire was completed by the Appellant's

attending physician, who confirmed that the Appellant has no special medical needs to be considered by [REDACTED] (Recording @ 50:27; Facility Exhibit 3.) Ms. Ali's claim that the Appellant has a need for medical accommodations is not substantiated by the evidence.

Ms. Ali also alleged that the Appellant would be eligible for an unspecified program other than shelter placement if Ms. Clutchker had included Appellant's prior [REDACTED] case number on the shelter referral form. The hearing record was held open for six business days to afford the Facility an opportunity to follow up on Ms. Ali's claims that the Appellant could obtain other, or more favorable, placement by reporting his prior case number. The referral form itself, however, explains that prior [REDACTED] is relevant only if it had occurred within the past [REDACTED] years. The Appellant last resided in a [REDACTED] shelter [REDACTED] years ago. (Facility Exhibit 3; Recording @ 48:50.)

On April 30, 2018, a conference call was held between the parties, during which Ms. Clutchker confirmed that she had transmitted an addendum to the Appellant's earlier [REDACTED] shelter referral form to include the Appellant's prior [REDACTED] case number and additional medical information requested by [REDACTED]. Ms. Clutchker also submitted an [REDACTED] referral form on the Appellant's behalf, even though the Appellant does not meet the eligibility criteria for the [REDACTED] recipients must require a nursing home level of care. He is being discharged from the Facility precisely because he does not require skilled nursing services. The Facility has established that its discharge plan is appropriate, and the Appellant has presented no justification for further extension of his stay at the Facility.

CONCLUSION

There is no dispute that the Appellant is independent and receives no assistance from the Facility. The Appellant's sole contention is that he should not be discharged to a shelter.

However, due to the Appellant's present lack of income, stable medical conditions and physical independence, shelter placement is currently the only available discharge location. His attending physician has confirmed that the Appellant is independent with all activities of daily living, and has no special medical needs.

Despite the concerns voiced by the Appellant and his [REDACTED] regarding shelter placement, neither offered practical alternative discharge locations. While Ms. Ali suggested a means of facilitating the Appellant's discharge to an alternate program or shelter offered by [REDACTED], she has not established that shelter placement is itself inappropriate. The Appellant is entitled and encouraged to continue to pursue other options than shelter referral, but is not entitled to remain in the Facility while he does so. The Facility's determination is upheld.

DECISION

Bainbridge Nursing and Rehabilitation Center has established that its determination to discharge the Appellant was correct, and that its discharge plan is appropriate.

1. Bainbridge Nursing and Rehabilitation Center is authorized to discharge the Appellant in accordance with its [REDACTED] 2018 discharge notice.

Dated: May 2, 2018
New York, New York



Natalie J. Bordeaux
Administrative Law Judge