



Department of Health

ANDREW M. CUOMO
Governor

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

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

June 11, 2018

CERTIFIED MAIL/RETURN RECEIPT

Angela C. Bellizzi, Esq.
General Counsel
Peninsula Nursing and Rehabilitation Center
50-15 Beach Channel Drive
Far Rockaway, New York 11691

[REDACTED]
Peninsula Nursing and Rehabilitation Center
50-15 Beach Channel Drive
Far Rockaway, New York 11691

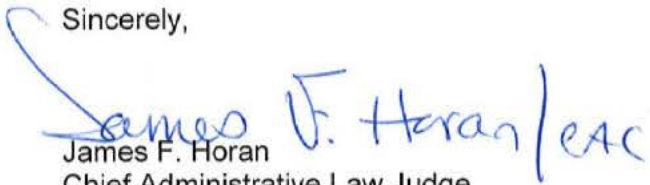
RE: In the Matter of [REDACTED] Discharge Appeal

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

[Redacted Name]

Appellant,

from a determination by

PENINSULA NURSING AND
REHABILITATION CENTER

Respondent,

to discharge him from a residential health
care facility.

COPY

DECISION

Hearing Before:

Matthew C. Hall
Administrative Law Judge

Held at:

Peninsula Nursing and
Rehabilitation Center
50-15 Beach Channel Drive
Far Rockaway, New York 11691

Hearing Date:

May 11, 2018

Parties:

Peninsula Nursing and
Rehabilitation Center
By: Angela C. Bellizzi, Esq.

[Redacted Signature]

Pro Se

JURISDICTION

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

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and attached Facility Discharge Notice

Facility Exhibits: 1 - Facility Discharge Notice [REDACTED] 18)
1A- Amended Discharge Notice [REDACTED] 18)
2 - Progress Notes [REDACTED] 18 thru [REDACTED] 18)
3 - Investigation Summary [REDACTED] 18)
4 - Progress Notes [REDACTED] 17 thru [REDACTED] 18)
5 - Progress Notes [REDACTED] 18)
6 - Video [REDACTED] 18)

Facility Witnesses: Doctor Janaki Kanumilli - Attending Physician
Stephanie Pierre - R.N., Director of Nursing
Monique Cunningham - Social Worker
Jillian Bosinius - Director of Social Work

Appellant's Witness: Appellant Testified on his own behalf

ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its 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 cited evidence.

1. The Appellant is a [REDACTED]-year-old man who was admitted to the Facility on [REDACTED] 2013. (Ex 3)

2. He was admitted with diagnoses of [REDACTED]

[REDACTED]

[REDACTED]

(Ex 3)

3. By notice dated [REDACTED] 2018, the Facility determined to discharge the Appellant on [REDACTED] 2018 because "the health and/or safety of individuals in the facility who would otherwise be endangered," due to the Appellant's "use and possession of [REDACTED]" (Ex 1) The Facility subsequently

amended the discharge notice to note that the resident's "health has improved sufficiently" so that he "no longer need(s) the services provided," by the Facility. (Ex 1A)

4. The Facility determined to discharge the Appellant to the [REDACTED] Shelter, a [REDACTED] shelter located at [REDACTED] [REDACTED] (Ex 1A)

5. On [REDACTED] 2017, the Appellant was found unresponsive on the floor of his bedroom. Emergency Medical Services (EMS) was called and the Appellant was sent to the hospital. He was administered [REDACTED] given for [REDACTED] x 3, Ex 4).

6. Again, on [REDACTED] 2018, at [REDACTED] the Appellant was found unresponsive on the floor of his bedroom by Facility nursing staff. He was administered [REDACTED] and EMS was again called. Fearing the Appellant had [REDACTED] the nursing staff administered [REDACTED] used for emergency treatment of suspected [REDACTED] at [REDACTED]. and again at [REDACTED]

[REDACTED] The Appellant did not respond. EMS then arrived and administered [REDACTED] to the Appellant intravenously. The Appellant immediately regained consciousness. He was transported to [REDACTED] [REDACTED] Hospital and shortly thereafter the Hospital reported to [REDACTED]

the Facility that the Appellant's [REDACTED] report was [REDACTED]
for [REDACTED] (Ex 3, T Pierre)

7. During his stay, the Appellant's health has improved significantly. He regularly refuses treatment and is noncompliant with his plan of care. His most recent BIMs score was [REDACTED]

[REDACTED] 15. He is independent in his Activities of Daily Living (ADLs). He has multiple friends in the community and frequently goes out on pass with them. (T Kanumilli, Appellant)

8. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending Physician, that discharge to the community, including a shelter, is appropriate for Appellant. (T Kanumilli, Cunningham, Bosinius)

APPLICABLE LAW

A residential health care facility (also referred to in the Department of Health Rules and 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).

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)(i)(a)(3) and (4), which state:

The safety (and health) of individuals in the Facility (are) endangered.

The Facility also 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.

Under the hearing procedures at Title 10 NYCRR §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under the New York State Administrative Procedures Act (SAPA) § 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational

basis for decision, Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 (3rd Dept. 1984), appeal dismissed 63 N.Y.2d 649.

DISCUSSION

Reasons for Discharge

Regarding whether the safety and health of individuals in the Facility are endangered:

The Appellant was admitted to the Facility on [REDACTED] 2013, with multiple diagnoses including [REDACTED]

[REDACTED]

As described above in Findings of Fact 5 and 6, on two separate occasions, the Appellant [REDACTED]. Each time, the amount of [REDACTED] taken by the Appellant was so great that nursing and emergency staff had to administer [REDACTED] and [REDACTED] in order to [REDACTED] him. Each time, he was sent to the hospital and his [REDACTED] reports were [REDACTED] for [REDACTED].

Dr. Janaki Kanumilli (Kanumilli), the Facility's Attending Physician testified that the safety of the individuals at the Facility was endangered by the Appellant's drug usage. When asked why this was a danger, Kanumilli stated, "Because where is he

getting his drugs from? Somebody is providing drugs for him." She continued, "It is harmful because they can give it to other residents too." (T Kanumilli)

Clearly, a resident who habitually uses [REDACTED] to the extent that it causes him to [REDACTED] should be considered a danger, not only to himself, but to other residents and medical staff at the Facility. Overall, the Appellant's abuse of [REDACTED] within the Facility creates an unsafe environment for all who are at the Facility.

The Appellant testified on his own behalf and denied abusing [REDACTED]. The Appellant was asked to explain how his [REDACTED] reports, in both instances, indicated an excess of [REDACTED] in his system. The Appellant replied that this situation is "normal and that he didn't take anything." He also stated that "he always [REDACTED]" (T. Cunningham)

Accordingly, the Facility has proven that the safety of other residents at the Facility is endangered and its determination to discharge the Appellant is correct.

Regarding whether the resident's health improved sufficiently and the resident no longer require(s) the services of a skilled nursing facility:

During his stay, the Appellant's health has improved significantly. He regularly refuses treatment and is noncompliant with his plan of care. He is independent in his ADLs. He has multiple friends in the community and frequently goes out on pass with them. (T Kanumilli, Appellant)

When asked if the Appellant's needs could be met in the community, Dr. Kanumilli stated, "Yea, if he had help." When asked if the help he needed could be met on an outpatient basis in the community, she responded, "Yes." (T. Kanumilli). Indeed, the Facility's caregivers felt that the Appellant was ready to be "safely discharged to the community" prior to the two incidents described above. Due to these incidents, however, his discharge was delayed. When asked directly, the Appellant testified that he has "no need for a skilled nursing facility." (T Appellant)

Accordingly, the Facility has proven that the resident's health improved sufficiently and the resident no longer require(s) the services of a skilled nursing facility.

Discharge Location

Dr. Kanumilli testified that she felt that the preferred location of discharge for the Appellant would be at an inpatient care facility that could focus on his [REDACTED] and [REDACTED]

██████████" before he is discharged to the community. (T Kanumilli). The Facility has put considerable efforts into finding another discharge location for the Appellant, but his ██████████ behavior has impeded the Facility's efforts. Prior to the Appellant's second ██████████ the Facility assisted the Appellant with an application to the ██████████. Through ██████████ if approved, the Appellant could be offered a private apartment where he would live independently; that application is still pending. The Appellant is encouraged to continue with this application process. However, due to his ██████████ ██████████ additional services through ██████████ would no longer be available. (T Cunningham)

Accordingly, the Facility has proven that its plan to discharge the Appellant to a shelter is appropriate.

CONCLUSION

The Facility has proven that the Appellant is a danger to the safety and health of individuals in the Facility, and that the Appellant is no longer in need of skilled nursing care. He is therefore an appropriate candidate for discharge. The Appellant contended that he should not be discharged at all and would like to remain at the Facility. However, his improved health coupled

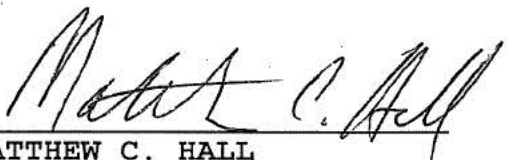
with his [REDACTED] show that he is no longer an appropriate fit at the Facility, and that discharge to a [REDACTED] shelter is appropriate.

DECISION

Peninsula Nursing and Rehabilitation Center has established that its determination to discharge the Appellant was correct, and that transfer to a [REDACTED] shelter is appropriate.

1. Peninsula Nursing and Rehabilitation Center is authorized to discharge the Appellant in accordance with its discharge plan on or after [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.

DATED: Albany, New York
June 11, 2018


MATTHEW C. HALL
Administrative Law Judge