



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 17, 2018

CERTIFIED MAIL/RETURN RECEIPT

Sol Blumenfeld, Administrator
Brooklyn Center for Rehabilitation and Residential Health Care
1455 Coney Island Avenue
Brooklyn, New York 11230

Richard Cohen, Esq.
Counsel to Selfhelp Community Services, Inc.
305 Broadway, Suite 402
New York, New York 10007

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

In the Matter of an Appeal, pursuant to
10 NYCRR § 415.3, by



Appellant,

from a determination by

**Brooklyn Center for Rehabilitation
and Residential Health Care**

Respondent,

to discharge her from a residential
health care facility.

COPY


DECISION
AND
ORDER

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held at: Mount Sinai Brooklyn
3201 Kings Highway
Brooklyn, New York 11230

Hearing Date: May 11, 2018

Parties: Brooklyn Center for Rehabilitation and Residential Health Care
By: Sol Blumenfeld, Administrator
1455 Coney Island Avenue
Brooklyn, New York 11230

By: 
Richard Cohen, Esq.,
Counsel to Selfhelp Community Services, Inc.
305 Broadway, Suite 402
New York, New York 10007

JURISDICTION

On [REDACTED] 2018, the Brooklyn Center for Rehabilitation and Residential Health Care (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's court-appointed guardian 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: Sol Blumenfeld, Administrator
Dania Dámbeville, Director of Social Services
Ann Marie Akinyooye, Director of Nursing Services
- Facility exhibit: 1
- Appellant witnesses: Reva Sears, Supervisor, Selfhelp Community Services, Inc. (Selfhelp), Appellant's Court-Appointed Guardian
Debra Cavan, Social Worker, Mount Sinai Brooklyn (Mount Sinai)
- Appellant exhibit: A

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

ISSUES

Has Brooklyn Center for Rehabilitation and Residential Health Care 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 female who was admitted to Brooklyn Center for Rehabilitation and Residential Health Care on [REDACTED] 2018. (T 25-26; 33.)
2. The Appellant is an incapacitated person pursuant to Mental Hygiene Law § 81.02(b), and has a court-appointed guardian to make all decisions concerning her personal needs. (Appellant Exhibit A.)

3. On [REDACTED] 2018, the Appellant was brought to Mount Sinai for evaluation. (T 8.)
4. On or about [REDACTED] 2018, Mount Sinai concluded that the Appellant was medically stable, and contacted the Facility to arrange for the Appellant's return. (Appellant Exhibit A.)
5. The Facility refused to readmit the Appellant. (T 7, 41.)
6. The Facility failed to issue a notice of discharge to the Appellant and her guardian. (T 8.)
7. On [REDACTED] 2018, Mount Sinai social worker Debra Cavan, in consultation with the Appellant's guardian, requested this hearing on the Appellant's behalf. (T 35.)
8. The Appellant remains at Mount Sinai 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. PHL §§ 2801(2)-(3); 10 NYCRR § 415.2(k).

Department regulations at 10 NYCRR § 415.3(h)(1)(i) describe the permissible bases upon which a residential health care facility may transfer or discharge a resident. The residential health care facility must notify the resident and a designated representative, if any, of the transfer or discharge and the reasons for the move in writing. Such notice must be provided no later than the date on which a determination was made to transfer or discharge the resident. 10 NYCRR §§ 415.3(h)(1)(iii)-(iv).

DISCUSSION

The Appellant has resided at the Facility since [REDACTED] 2018. On [REDACTED] 2018, she was transported to Mount Sinai for a medical evaluation. (T 25-26.) Ms. Cavan was subsequently advised by Facility staff that the Appellant would not be allowed to return to the Facility, even though she has no need for hospitalization. (T 41.)

At the hearing, the Facility's Administrator, Sol Blumenfeld, contended that the Appellant had discharged herself by contacting the 911 emergency response system of [REDACTED] 2018. The Facility's Director of Social Services, Dania Dambeville, insisted that the Appellant has repeatedly indicated that she does not want to remain in the nursing home. (T 7-14.) As an incapacitated person pursuant to Mental Hygiene Law § 81.02(b), the Appellant does not possess the legal authority to effectuate her own discharge. (Appellant Exhibit A.) Selfhelp, the Appellant's court-appointed guardian, has not sought the Appellant's removal from the Facility. (T 13.)

The Facility's refusal to allow the Appellant to return from Mount Sinai constitutes a discharge determination, of which the Facility was required to advise the Appellant and her court-appointed guardian in writing. 10 NYCRR § 415.3(h)(1)(iii). The Facility has confirmed that no discharge notice was issued. (T 8.) Its determination fails to comport with regulatory requirements and is not sustained.

DECISION AND ORDER

Brooklyn Center for Rehabilitation and Residential Health Care has not established that its determination to discharge the Appellant was correct or that its discharge plan is appropriate.

1. Brooklyn Center for Rehabilitation and Residential Health Care is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the facility, pursuant to 10 NYCRR § 415.3(h)(2)(i)(d).

Dated: May 16, 2018
New York, New York



Natalie J. Bordeaux
Administrative Law Judge