



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 20, 2018

CERTIFIED MAIL/RETURN RECEIPT

Carolee Lee, DSW
Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591

[REDACTED]
Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591

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]

Appellant,

from a determination by

TARRYTOWN HALL CARE CENTER,

Respondent,

to discharge her from a residential health
care facility.

COPY

DECISION

Tarrytown Hall Care Center ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED] 2018, to [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On June 13, 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 20 Wood Court, Tarrytown, New York. The

following individuals were present for the hearing: [REDACTED]

[REDACTED] Resident; Carolee Lee, Director of Social Work; Michelle Mercado, Social Worker; Nelly Fitzpatrick, Assistant Director of Nursing; and Neil Eisikowitz, Administrator.

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 Facility could not meet the Resident's needs. The proposed discharge location was the [REDACTED] Rehabilitation and Nursing Center. 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 on [REDACTED] 2018, for [REDACTED] term rehabilitation. (Facility 3; Recording @ 2:30).

2. On [REDACTED] 2018, the Facility issued a discharge notice to the Resident which proposed discharge to [REDACTED] Rehabilitation and Nursing Center. (Facility Ex. 1).

3. The discharge notice states that the Resident's interdisciplinary care team had determined that the Resident would be discharged because "the facility cannot meet the needs of the resident as evidenced by: This facility is a non-smoking facility and this resident has been smoking on the grounds of this facility." (Facility Ex. 1).

ANALYSIS AND CONCLUSIONS

The Facility claimed that the Resident had agreed to abide by its rules at the time of admission, but that she had been found smoking outside on Facility grounds. The Facility also claimed that the Resident had possessed cigarettes and a lighter within the Facility. The Resident acknowledged that she smoked cigarettes outside the Facility. The Resident stated that she is not opposed to discharge to another Facility, but the proposed discharge location is a skilled nursing facility over [REDACTED] miles away.

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations. 10 NYCRR 415.3[h][1](i)(a)(1) permits the discharge of a resident when "the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility." However, a resident's desire to smoke does not constitute a need within the meaning of the regulations, and smoking is not necessary for her welfare.

At the hearing, the Facility claimed that the Resident's possession of smoking materials posed a safety risk because another resident with dementia might find the lighter and start a fire. The Resident responded with an offer to place her smoking materials in a locked drawer if one was made available. The Facility failed


to establish a safety concern that cannot be addressed with an accommodation. Moreover, the safety allegation raised at the hearing is not properly before me because the sole basis for discharge contained in notice was that the Resident's needs could not be met.

DECISION AND ORDER

1. The Resident's appeal is granted. The Facility has not established a basis to discharge the Resident.

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
June 19, 2018



WILLIAM J. LYNCH
Administrative Law Judge