



Department of Health

ANDREW M. CUOMO
Governor

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

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

August 27, 2018

CERTIFIED MAIL/RETURN RECEIPT

Irwin Pomerantz, Administrator
Long Island Care Center
144-61 38th Avenue
Flushing, New York 11354

[REDACTED]
c/o Long Island Care Center
114-61 38th Avenue
Flushing, New York 11354

Georgeann Caporal Papadakos, Esq.
Mental Hygiene Legal Services
Second Judicial Department
One Metrotech Center, 3rd Floor
Brooklyn, New York 11201

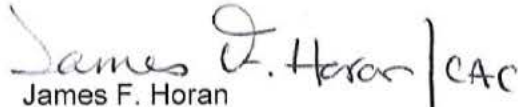
RE: In the Matter of [REDACTED] - Discharge Appeal

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

Long Island Care Center

Respondent,

to discharge him from a residential
health care facility.

COPY

**DECISION
AND
ORDER**

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held at: New York-Presbyterian Brooklyn Methodist Hospital
506 6th Street
Brooklyn, New York 11215

Hearing Date: July 16, 2018

Parties: Long Island Care Center
By: Irwin Pomerantz, Administrator
144-61 38th Avenue
Flushing, NY 11354

[REDACTED]

By: Georgeann Caporal Papadacos, Esq.
Mental Hygiene Legal Service
Second Judicial Department
One Metrotech Center, 3rd Floor
Brooklyn, New York 11201

JURISDICTION

Long Island Care 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: Irwin Pomerantz, Administrator
Ashley Dufort, Director of Social Work
- Facility exhibits: 1-2
- Appellant witnesses: Donna Holmes, LMSW, New York-Presbyterian
Brooklyn Methodist Hospital (Brooklyn Methodist)
Dr. Jessie Colah, Attending Psychiatrist, Brooklyn Methodist
- Appellant exhibits: A-C

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 Long Island Care Center established that the Appellant’s discharge was necessary and the discharge plan appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED] year-old male who was admitted to Long Island Care Center on [REDACTED] 2013. (Facility Exhibit 1.)

2. The Appellant’s admitting diagnoses were: [REDACTED]
[REDACTED]
[REDACTED] (Facility Exhibit 1.)

3. On [REDACTED] 2018, Facility staff arranged for the Appellant's transportation to New York-Presbyterian Queens Hospital (Queens Hospital) for medical treatment of an [REDACTED] [REDACTED] (Recording @ 3:59.)

4. On [REDACTED] 2018, the Facility mailed a notice to the Appellant's [REDACTED] advising him that the Appellant was discharged on [REDACTED] 2018 to Queens Hospital (an acute care facility) because the Facility cannot meet the Appellant's needs, and the health and safety of individuals would otherwise be endangered. (Facility Exhibit 2.)

5. On [REDACTED] 2018, the Appellant was transferred from Queens Hospital to Brooklyn Methodist, where he was admitted as a [REDACTED] inpatient. (Appellant Exhibits A and B.)

6. On [REDACTED] 2018, Donna Holmes, a Brooklyn Methodist Psychiatric Social Worker, informed the Facility that the Appellant was medically cleared for return to the Facility. The Facility refused to readmit the Appellant. (Recording @ 27:12.)

7. The Appellant has neither a medical nor [REDACTED] need for continued hospitalization.

8. The Appellant has remained an inpatient at Brooklyn Methodist pending the outcome of this hearing. (Appellant Exhibits A and B; Recording @ 26:16: 1:03:00.)

9. A hearing was held on July 16, 2018, during which the Facility was directed to readmit the Appellant to the next available semi-private bed. (Recording @ 1:12:10.) This written decision is the final administrative determination regarding the 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 was admitted to the Facility on [REDACTED] 2013 with diagnoses of [REDACTED]

[REDACTED] Facility Exhibit 1.) On [REDACTED] 2018, the Appellant was transported to Queens Hospital for medical treatment. (Recording @ 3:59.) However, on [REDACTED] 2018, the Facility determined to discharge the Appellant to Queens Hospital. (Facility Exhibit 2.)

The Facility was required to advise the Appellant in writing that he was being discharged, and the reasons why he was being discharged. 10 NYCRR § 415.3(h)(1)(iii). The Appellant was never provided such notification. (Recording @ 27:38.) Furthermore, as stated in its [REDACTED] 2018 notice, the Facility had determined to discharge the Appellant to Queens Hospital. The Appellant's discharge to an acute care hospital is not an appropriate discharge plan. The Facility's determination fails to comport with regulatory requirements and is not sustained.

DECISION AND ORDER

Long Island Care Center has not established that the Appellant's discharge was necessary and the discharge plan appropriate.

1. Long Island Care Center 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: July 20, 2018
New York, New York



Natalie J. Bordeaux
Administrative Law Judge