



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 7, 2018

CERTIFIED MAIL/RETURN RECEIPT

Carolee Lee, Director of Social Work
Tarrytown Hall Care Center
20 Wood Court
Tarrytown, New York 10591

[REDACTED]
c/o 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: cmg
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

COPY

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 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. :
 -----X

DECISION

The Tarrytown Hall Care Center ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED] and amended on [REDACTED] 2018, to [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On July 26, 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; [REDACTED] [REDACTED], friend of the Resident;
Carolee Lee, Director of Social Work; Michelle Mercado, Social
Worker; Rene Gebusion, Director of Rehabilitation; and Neil
Eisikowitz, Administrator.

STATEMENT OF THE CASE

The Facility issued a determination proposing to discharge the Resident effective [REDACTED] [REDACTED] 2018. The stated reason for the discharge was that the Resident's health had improved sufficiently so that she no longer required the services provided by a skilled nursing facility. The proposed discharge location was to the [REDACTED]
[REDACTED] DSS at [REDACTED],
[REDACTED], New York. 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] [REDACTED], 2018 for short term rehabilitation following a [REDACTED] accident. (Facility Ex. 4).

2. The Resident suffered a [REDACTED] [REDACTED] in the accident, and the [REDACTED] has not healed. Therefore, she requires a [REDACTED] [REDACTED] surgery which is currently scheduled for [REDACTED], 2018, but the [REDACTED] surgeon may perform the surgery sooner if an opening occurs. (Recording @ 13:00).

3. The [REDACTED] surgeon has ordered that the Resident receive physical therapy and occupational therapy as tolerated five days per week until the surgery is performed. The Facility is providing these therapies to the Resident. (Recording @ 25:00).

4. The Resident's attending physician at the Facility states in a letter that the Resident "is medically cleared for discharge and at this time she can safely maneuver 175 feet with a [REDACTED] walker and can independently maneuver her wheelchair on all surfaces, making it safe for her to be discharged from this skilled nursing facility." (Facility Ex. 3).

5. The Resident's interdisciplinary care team completed a written discharge plan on [REDACTED] 2018. The rehabilitation summary states that the Resident is independent in bed mobility and transfer, and she is able to ambulate for 175 feet with supervision using a [REDACTED]. The occupational summary states that she requires modified independence with toileting, grooming/hygiene, upper body dressing and requires set-up with lower body dressing and bathing. The daily care need summary states that she requires supervision with transfer and dressing. (Facility Ex. 2).

6. The Facility issued a discharge notice to the Resident which proposes discharge to the [REDACTED] of [REDACTED] DSS. (Facility Ex. 1).

ANALYSIS AND CONCLUSIONS

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)(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.

Although a letter from the Resident's attending physician claims that the Resident was medically clear for discharge, a Discharge Plan created on [REDACTED] 2018, by the members of the Resident's interdisciplinary care team indicates that the Resident has modified independence with some activities and requires set up or supervision for others. When questioned as to why the Facility was discharging a Resident to the [REDACTED] with these documented needs, Ms. Lee, the Director of Social Work, claimed that the Discharge Plan would be "updated upon discharge."

Based on the record, I conclude, however, that the Resident's health has not improved sufficiently to allow her discharge to the [REDACTED]

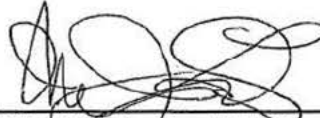
[REDACTED] The documentation provided by the Facility regarding the Resident's ability to perform the activities of daily living is inconsistent and therefore lacks credibility. Further, the Facility failed to establish that the Resident was provided with an opportunity to have input on the discharge planning or sufficiently explore the possibility of

discharge to an Assisted Living Facility. In addition, uncontroverted evidence established that the Resident has a [REDACTED] and requires physical and occupational therapy five times per week until a [REDACTED] surgery is performed. The Facility failed to establish that the Resident would be able to access this level of physical and occupational therapy if she were discharged to the [REDACTED]. Accordingly, I find that the Resident's health has not sufficiently improved to permit discharge and that she continues to require the services of a skilled nursing facility.

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
August 7, 2018



WILLIAM J. LYNCH
Administrative Law Judge