



Department of Health

ANDREW M. CUOMO
Governor

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

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

October 23, 2018

CERTIFIED MAIL/RETURN RECEIPT

Mike Vega, LMSW
Bronx Center for Rehab and Health
1010 Underhill Avenue
Bronx, New York 10472

[REDACTED]
c/o Bronx Center for Rehab and Health
1010 Underhill Avenue
Bronx, New York 10472

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**

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

[REDACTED]

Appellant,

from a determination by

**Bronx Center for Rehabilitation
and Health Care,**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Hearing Location: Bronx Center for Rehabilitation and Health Care
1010 Underhill Avenue
Bronx, New York 10472

Hearing Dates: September 12, 2018
September 28, 2018

Parties: Bronx Center for Rehabilitation and Health Care
By: Michael Vega, Director of Social Work

[REDACTED]

Pro Se

JURISDICTION

By notice dated ██████████, 2018, Bronx Center for Rehabilitation and Health Care (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge ██████████ (the Appellant). The Appellant appealed the discharge determination to the New York State Department of Health pursuant to 10 NYCRR § 415.3(h).

HEARING RECORD

Facility witnesses: Antoinette Miller-Brown, RN
Serena Troche, Finance Specialist

Facility exhibits: 1 (Resident Face Sheet)
2 ██████████/2018 progress note entered by M. Vega)
3 ██████████/2018 discharge notice)
4 ██████████/2018 letter from M. Vega)
5 ██████████/2018 letter from Dr. Win Myint)
6 ██████████/2018 letter from S. Troche)
7 ██████████/2018 statement of amount owed)

Appellant witnesses: ██████████ Appellant

Appellant exhibits: None

ALJ Exhibits: I (Notice of Hearing)
II (10/18/2018 fax transmission from Michael Vega)

A digital recording of the hearing was made. The September 12, 2018 recording is referenced in this decision as “Disc 1”, and the September 28, 2018 recording is cited as “Disc 2”.

ISSUES

Has Bronx Center for Rehabilitation and Health Care established that the Appellant’s discharge was necessary and that the discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED] year-old male Medicaid recipient who was admitted to the Facility on [REDACTED] 2014 after hospitalization. (Exhibit 1.)

2. The Appellant's current diagnoses are [REDACTED]

[REDACTED] Exhibit 1.)

3. Since [REDACTED] 2014, the Appellant has been required to pay the Facility his net available monthly income (NAMI), an amount determined by Medicaid budgeting guidelines which constitutes his personal financial obligation towards the cost of his stay. (Exhibit 7.)

4. In [REDACTED] 2018, the Appellant's NAMI amount of [REDACTED] was increased by [REDACTED] to account for his receipt of a monthly pension benefit of [REDACTED] (Exhibit 7.)

5. The Appellant has consistently refused to pay over or cooperate with the Facility in obtaining the portion of his NAMI attributable to his monthly pension, and has prevented Facility staff from verifying his continued receipt of the pension benefit. (Exhibits 4 and 6.)

6. By notice date [REDACTED] 2018, the Facility determined to discharge the Appellant on [REDACTED] 2018 because he has failed after reasonable and appropriate notice, to pay for his stay. The notice proposes to discharge the Appellant to the [REDACTED] Shelter located at [REDACTED]

[REDACTED] (Exhibit 3.)

7. The Appellant does not require skilled nursing care and performs all activities of daily living independently. (Disc 2 @ 41:30.)

8. The Appellant's clinical record contains documentation from the Appellant's physician that the Appellant is medically stable, and that discharge to the shelter is appropriate. (Exhibit 5.)

9. The Appellant remains at the Facility 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).

Regulations at 10 NYCRR § 415.3(h) describe the transfer and discharge rights of residential health care facility residents. They state, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility:

(b) transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid, or third-party insurance) a stay at the facility... Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the funds;

When a residential health care facility determines to discharge a resident, the facility must ensure that the resident's clinical record contains complete documentation. 10 NYCRR § 415.3(h)(1)(ii). The residential health care facility must prove by substantial evidence that the discharge was necessary, and the discharge plan was appropriate. 10 NYCRR § 415.3(h)(2)(iii); State Administrative Procedure Act § 306(1).

DISCUSSION

By notice dated ██████████ 2018, the Facility advised the Appellant of its determination to discharge him on ██████████ 2018 because he has failed, after reasonable and appropriate notice, to pay for his stay at Bronx Center for Rehabilitation and Health Care. (Exhibit 3.)

Beginning approximately ██████████ 2018, the Appellant's NAMI increased by ██████████ representing the amount of his pension benefit. Although the Facility receives the Appellant's monthly Social Security Disability benefit (less ██████████ returned to the Appellant as a Medicaid-budgeted Personal Needs Allowance pursuant to 18 NYCRR § 398.1), he is also responsible for paying the ██████████ monthly pension income to the Facility.

The Appellant insisted that his monthly pension benefit is sent to his ██████████ as ██████████ (Disc 2 @ 2:05.) Despite multiple promises to provide documentation to Facility Finance Coordinator Serena Troche, the Appellant failed to provide any evidence to support his claim and refused to allow Ms. Troche to speak with his pension administrator. (Exhibit 6.) At the hearing, the Appellant initially agreed to allow the Facility staff and Administrative Law Judge to converse with a representative of the pension benefit administrator by telephone, only to then verbally advise the pension representative that he would not allow disclosure of his pension information. (Disc 2 @ 3:49.)

Despite multiple attempts at the hearing to explain the Appellant's responsibility to pay the Medicaid-computed NAMI, the Appellant insisted that he should not be required to make any payments to the Facility. As of the date of this hearing, the Appellant's outstanding balance totaled ██████████ The Facility has established grounds for discharge because the Appellant has failed, after reasonable and appropriate notice, to pay for the cost of his stay.

Regarding its discharge plan, the Facility proposes to discharge the Appellant to the ██████████ Shelter on ██████████ (Exhibit 1.) The Appellant's attending physician at the Facility has determined and documented that the Appellant is medically stable and can be safely discharged to the shelter. (Exhibit 5.) By his own admission, the Appellant receives neither medical nor skilled nursing care at the Facility. (Disc 2 @ 41:40.)

The Appellant is alert and oriented as to time, place, and person. He is able to make his needs known and to represent himself.¹ (Disc 2 @ 30:40.) He confirmed that he is independent and wants his freedom. (Disc 2 @ 15:40; 21:07; 28:35.) Although the Appellant insisted that he is a ██████████ man, he was clearly able to recall important facts, respond to questions asked, and follow along with information provided during the hearing without difficulty. He also demonstrated a thorough understanding of his medication regimen, accurately reciting the schedule, dosage, and number of pills ingested per day. (Disc 2 @ 31:40; 35:09.)

Consistent with his refusal to work with Facility staff in verifying his financial information, the Appellant also refused to accept any discharge location or cooperate in any discharge planning efforts. He is unwilling to live in an assisted living facility and has no home in the community to which he may be discharged. On the second scheduled hearing date, the Appellant finally agreed to be transferred to another nursing home. The parties were afforded two weeks to attempt to procure a nursing home placement. (Disc 2 @ 26:37.)

Michael Vega, the Facility's Director of Social Work, contacted twenty New York City-based nursing homes to obtain placement for the Appellant notwithstanding the fact that he does not require skilled nursing care. Despite the Appellant's claimed willingness to be transferred to

¹ Noting the diagnosis of ██████████ on the Appellant's Face Sheet during the first hearing date, the Administrative Law Judge requested the presence of a representative from the New York State Long-Term Care Ombudsman Program, who declined to participate in the hearing. (Disc 2 @ 24:50.)

another nursing home, the Appellant refused offered nursing home placement at ██████████

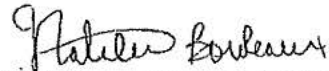
██████████ a nursing home located in ██████████ (Exhibit II.)

The Appellant's behavior left the Facility with no discharge option other than the ██████████
██████████ Shelter, as originally noted in the ██████████ 2018 discharge notice. The Facility's
determination is therefore upheld.

DECISION

Bronx Center for Rehabilitation and Health Care has established that its determination to
discharge the Appellant was necessary and its discharge plan appropriate.

Dated: October 23, 2018
New York, New York



Natalie J. Bordeaux
Administrative Law Judge