



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 25, 2018

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002

Ms. Yvonne Torres, Director of Social Work
New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002

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

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

[REDACTED]

Appellant,

from a determination by

NEW GOUVERNEUR HOSPITAL SNF

Respondent,

to discharge her from a residential health :
care facility :

ORIGINAL

DECISION

-----X
By notice dated [REDACTED] 2018, New Gouverneur Hospital SNF (the Facility) determined to discharge [REDACTED] (the Appellant) from care in its facility. [REDACTED] the Appellant's [REDACTED] appealed the proposed discharge on the Appellant's behalf. A hearing was held at the Facility on October 15, 2018, before Dawn MacKillop-Soller, Administrative Law Judge. The Appellant was present at the hearing, accompanied by Ombudsman Nerissa Johnson, and represented by he [REDACTED]. The Facility was represented by Yvonne Torres, Director of Social Work.

The [REDACTED] 2018 Discharge Notice was marked ALJ Exhibit I. Danny Wong, Director of Rehabilitation, Jeffrey Nichols, M.D. and Ms. Torres testified for the Facility and presented Exhibits 1-6 [REDACTED] the Appellant' [REDACTED] testified for

the Appellant and presented Exhibits A-B. The Appellant provided limited testimony on her own behalf. An audio recording of the hearing was made.

The Facility determined to discharge the Appellant because her health has improved sufficiently so she no longer needs the services provided by the Facility. The discharge plan proposed to discharge the Appellant to her home in [REDACTED] opposed the discharge plan on his [REDACTED] behalf, claiming she continues to require nursing home care to complete her activities of daily living and to meet her medical needs. The Appellant remains at the Facility pending the outcome of this proceeding.

ISSUES

Has the Facility met its burden of proving that the Appellant's health has improved sufficiently so she no longer needs skilled nursing care services, and established that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant, age [REDACTED], was admitted to the Facility on [REDACTED] 2016, for [REDACTED]-term rehabilitation after sustaining a [REDACTED] from a fall at home. Her medical conditions include [REDACTED]
[REDACTED]
[REDACTED] She requires multiple medications daily, including [REDACTED]

She is also [REDACTED] impairments.

(Exhibit 1; Recording 38:52, 41:32, 54:30, 1:09:5.)

2. The Appellant was discharged from physical therapy on [REDACTED] 2016, with instructions for nursing staff to closely monitor her transfers and ambulation. In [REDACTED] of 2016, rehabilitation staff noted she was [REDACTED]

[REDACTED] but still required close monitoring for transfers and ambulation, which she could accomplish with a wheelchair or

[REDACTED] up to 100 feet. (Exhibits 1, 2; Recording 7:29, 8:39.)

3. [REDACTED] 2017, and [REDACTED] 2018 physical therapy assessments continued to document that the Appellant used a wheelchair and [REDACTED] walker for up to 100 feet for ambulation. The assessments also documented a need for [REDACTED] hours of supervision for staff to provide regular verbal cues to steady her [REDACTED]

[REDACTED] (Exhibits 1, 5; Recording 11:39, 12:16.)

4. The Appellant also requires [REDACTED] hours of supervision with medication management, transfers, dressing, standing, sitting, toileting and feeding. She is intermittently incontinent and incapable of meal preparation. (Recording 24:00, 26:09, 28:19, 32:28, 43:40, 1:02:16.)

5. The Appellant has poor safety awareness, which has resulted in falls and her inadvertent use of [REDACTED] overnight to

[REDACTED] She has repeatedly fallen from her bed. On [REDACTED] 2018, after she fell in a Facility bathroom,

she required a call bell for all transfers and close monitoring for toileting transfers. (Recording 13:09, 18:02, 34:36, 51:24, 56:22.)

6. The Facility proposes to discharge the Appellant to her home, an apartment occupied solely by her [REDACTED] year-old [REDACTED]

[REDACTED]. While the Facility proposes to deliver durable medical equipment to the home, such as a wheelchair, bed side commode, shower grab bars and [REDACTED] walker, it has conducted no assessment to determine whether other devices in the home are needed for safe ambulation. The Facility referred the Appellant for home care services, but it has made no efforts to confirm her eligibility for such services and whether they will be adequate to meet her needs.

(Recording 22:39, 25:55, 27:44, 47:24.)

7. The Appellant's care team at the Facility and the Facility's physician, Jeffrey Nichols, M.D., conclude that while safety concerns exist with the proposed plan, with home health care services in place and family support, discharge to the home is safe and appropriate. Dr. Nichols' opinion, however, was based on his limited observations of the Appellant standing up from a seated position and using a [REDACTED] walker in the hallway, a review of the medical records and discussions with Facility staff. (Recording

37:42, 47:06, 49:04, 56:22.)

APPLICABLE LAW

1. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(h). It provides, 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. (a) The resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that:

(1) 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;

(2) 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;

2. The Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate. 10 NYCRR 415.3(h) (2) (iii).

ANALYSIS AND CONCLUSIONS

The Facility failed to prove by substantial evidence either that the Appellant's health has improved sufficiently so she no longer requires nursing home care, or that its discharge plan to transfer the Appellant to her apartment, a home shared with her [REDACTED]

[REDACTED] is appropriate. Under 10 NYCRR 415.3(h)(1)(i), a nursing home is obligated to consider a resident's right to receive "necessary care and services" as part of its discharge plan, a requirement the evidence showed the Facility failed to meet.

The Appellant was admitted to the Facility for [REDACTED] term rehabilitation on [REDACTED] 2016, following her hospitalization at [REDACTED]

[REDACTED] Hospital for [REDACTED] resulting from a fall in the bathroom of her home. At that time, her medical history included [REDACTED] falls, difficulty [REDACTED] and decreased [REDACTED]. The Facility's evidence established that more than [REDACTED] years later, these medical conditions persist and repeatedly jeopardize the Appellant's safety, as demonstrated by her recurrent falls and difficulties [REDACTED]

Dr. Nichols and Mr. Wong acknowledge these challenges, particularly considering the Appellant's [REDACTED] in completing even simple tasks, such as holding a grab bar or using [REDACTED] at a time to walk or enter the shower. (Exhibits A, 1; Recording 5:29, 14:13, 56:22.)

The Facility claims such safety risks will be mitigated by family and home health care aides supervising the Appellant [REDACTED]

arrangements the evidence confirmed as not viable. The Appellant's [REDACTED] lives alone. He is [REDACTED] of managing her care needs or intervening in the event of a fall. Given the absence of adequate family support, the Facility asserts home health care aides can handle the Appellant's care demands. While this sounds workable with proper safeguards, equipment and [REDACTED] supervision, the Appellant's eligibility and suitability for such continuous care has not been established. (Recording 25:55, 26:17, 51:08, 1:14:13.)

The Appellant's [REDACTED] contests the Facility's determination that his [REDACTED] who is [REDACTED] and in need of constant oversight, no longer requires skilled nursing services. I find the Facility's determination in this regard ignores Mr. Wong's assessment that even with performing the most basic activities of daily living, the Appellant requires continuous redirecting to stay on task to avoid injury. It also fails to consider Dr. Nichols' description of her medication administration needs - drug choice, dosage and timing - and multiple rehabilitation assessments. In fact, in [REDACTED] of 2018, Dr. Nichols requested a physical therapy evaluation for the Appellant's [REDACTED] mobility abnormalities that the record established render her a fall risk. The Appellant's continuous need for rehabilitation assessments, coupled with her condition and poor safety awareness, require the involvement of skilled personnel. (Exhibit 5; Recording 11:39, 12:16, 16:06, 32:28, 41:32, 49:04.)


I find the Facility's determination to discharge the Appellant was not appropriate because the Facility failed to prove by substantial evidence that the Appellant's condition has improved sufficiently so she no longer needs nursing home care. Consequently, I also find the discharge plan to transfer her home inappropriate. The Facility is not authorized to discharge the Appellant to her home in accordance with its discharge plan.


DECISION AND ORDER

1. The Facility is not authorized to discharge the Appellant.
2. This Order shall be effective upon service on the Petitioner by personal service or by registered or certified mail as required under PHL 12-a(4).

Dated: Albany, New York
October 24, 2018


DAWN MacKILLOP-SOLLER
Administrative Law Judge

To: 
New Gouverneur Hospital SNF
227 Madison Street
New York, New York 10002


Ms. Yvonne Torres, Director of Social Work
New Gouverneur Hospital SNF
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