



Department of Health

ANDREW M. CUOMO
Governor

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

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

February 26, 2019

CERTIFIED MAIL/RETURN RECEIPT

Paul Mullman, Director of Social Work
Quantum Rehabilitation and Nursing
63 Oak Crest Avenue
Middle Island, New York 11953

██████████
c/o Quantum Rehabilitation and Nursing
63 Oak Crest Avenue
Middle Island, New York 11953

RE: In the Matter of ██████████ – 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

Quantum Rehabilitation and Nursing,

Respondent,

to discharge him from a residential health care facility.

ORIGINAL

DECISION

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Quantum Rehabilitation and Nursing
63 Oak Crest Avenue
Middle Island, New York 11953

Hearing Date:

February 20, 2019

Parties:

Quantum Rehabilitation and Nursing
By: Paul Mullman, Director of Social Work

[REDACTED]
Pro Se

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as Quantum Rehabilitation and Nursing (“Respondent” or “Facility”) is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(h). Respondent determined to discharge ██████████ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(a)(2) which provides, in pertinent part:

- (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:
 - ...
 - (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.

Appellant appealed the discharge determination to the New York State Department of Health, and a hearing on that appeal was held. Pursuant to 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate. SAPA § 306(1) provides that the standard of proof shall be by substantial evidence. “Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact; it is less than a preponderance of the evidence but more than mere surmise, conjecture or speculation. . . . Put differently, there must be a rational basis for the decision. (Citations omitted)” (*Stoker v. Tarentino*, 101 A.D.2d 651, 652, 475 N.Y.S.2d 562, 564 [App. Div. 3d Dept. 1984], mod. 64 N.Y.2d 994, 489 N.Y.S.2d 43.

A digital recording of the hearing was made part of the record. Appellant appeared and testified on his own behalf. Paul Mullman, Director of Social Work, and Patrick Hooper, R.N., Unit Manager, testified for Respondent. Kate Russell of the NYS Ombudsman's office was present at the hearing but did not testify.

The following documents were accepted into evidence by the Administrative Law Judge ("ALJ") as ALJ and Facility Exhibits:

ALJ:

- I: Notice of Hearing with the Facility's Discharge Notice attached

Facility:

- 1: ██████████ 2019 email from Dr. Divaris
- 2: ██████████, 2019 out on pass documents
- 3: ██████████, 2019 letter from Dr. Kao
- 4: ██████████, 2018 fax cover sheet re: ██████████ application

Appellant was given the opportunity but did not offer documents into evidence.

ISSUE

Has Quantum Rehabilitation and Nursing established that the transfer is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony ("T") of witnesses and exhibits ("Ex") found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejected in favor of the cited evidence.

1. Respondent, Quantum Rehabilitation and Nursing, is a residential health care facility located in Middle Island, New York. (Ex I)
2. Appellant, ██████████, age ████████ was admitted to the Facility on ██████████, 2018, for rehabilitative therapy following a ██████████. Appellant received physical therapy ("PT") in 2018 and again from approximately ██████████, 2019. (Ex 3; T Mullman)

██████/Quantum

3. Appellant is independent in wheelchair mobility and with his ADLs (activities of daily living). Appellant was discharged from PT on ████████ 2019, when he plateaued. Appellant was able to ambulate independently with a rollator at that time, but he hasn't walked since due to ████████ pain. (Ex 3; T Mullman, Appellant)

4. By notice dated ████████, 2019, Respondent advised Appellant that it had determined to discharge him on the grounds that his health has improved sufficiently so that he no longer needs the services provided by the Facility. Respondent's discharge plan is to transfer Appellant to the ████████ County Department of Social Services ("DSS" or "Shelter") located at ████████ ████████. DSS does not accept persons in wheelchairs. (Ex I; T Mullman)

5. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's physician, that discharge to the community, including the Shelter, is appropriate for Appellant. (Ex 3; T Mullman)

6. Appellant has remained at Quantum Rehabilitation and Nursing pending the outcome of this proceeding.


DISCUSSION

The evidence presented by both Appellant and Respondent demonstrated that the proposed discharge location, the Shelter, which does not accept persons in wheelchairs, is not an appropriate discharge location for Appellant who is wheelchair-bound and not currently ambulating independently with a cane, walker, or rollator. Dr. Kao's statement in his ████████ 2019 letter that Appellant "is medically cleared for discharge to DSS housing and/or shelter" (Ex 4) does not seem to take into account the fact that Appellant has not walked subsequent to his discharge from PT on ████████ 2019 or that DSS does not accept persons in wheelchairs.

██████████/Quantum

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: New York, New York
February 26, 2019


Ann H. Gayle
Administrative Law Judge

TO: ██████████
c/o Quantum Rehabilitation and Nursing
63 Oak Crest Avenue
Middle Island, New York 11953

Paul Mullman, Social Worker
Quantum Rehabilitation and Nursing
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