



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

May 20, 2019

CERTIFIED MAIL/RETURN RECEIPT

Meg Bondy, Director of Social Work
The New Jewish Home – Manhattan
120 West 106th Street
New York, New York 10025

██████████
c/o The New Jewish Home - Manhattan
120 West 106th Street
New York, New York 10025

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

COPY

In the Matter of
█/The New Jewish Home

Administrative Law Judge's Decision

Appeal from a Nursing Home Resident
Discharge pursuant to Title 10 (Health) of the
Official Compilation of Codes, Rules and
Regulation of the State of New York (NYCRR)
§415.3(h)

Before: Administrative Law Judge (ALJ) James F. Horan

For The New Jewish Home (Facility): Meg Bondy, Director of Social Work

For Resident █ (Appellant): *Pro Se*

The Facility moved to discharge the Appellant on the grounds that the Appellant's condition has improved sufficiently so that he no longer requires care in a nursing home and proposed discharge to the █ Shelter System (System). The Appellant requested a hearing to challenge the grounds for discharge as well as discharge to the System and argued that he suffered conditions that require further care in the nursing home. In this proceeding, the Facility called witnesses and presented documents into the hearing record. The record remained open for the Appellant to obtain counsel and produce documentation. After reviewing the record, the ALJ finds that the Appellant's health has improved sufficiently so that the Appellant no longer requires skilled care in a nursing home and that the Appellant's condition has improved to the point that the Facility can discharge the Appellant safely to the community. The ALJ finds further that the Facility has identified an appropriate discharge plan to the System.

I. Background

The Appellant is a resident at the Facility, which holds licensure as a nursing home pursuant to New York Public Health Law (McKinney Supp. 2019) § 2801(a). Under Title 10 NYCRR § 415.3(h), a nursing home resident holds certain rights regarding transfer or discharge. Title 10 NYCRR § 415.3(h)(1)(i)(2) allows involuntary discharge if a resident's health has improved sufficiently so that the resident no longer requires the services that the facility provides. Under the standards at 10 NYCRR § 415.2(k), a nursing home provides nursing and professional services twenty-four hours per day for patients who require those services, but do not require services in a general hospital. In effect, this proceeding acts as a stay on any discharge, until the Department renders the decision on the discharge appeal. If a decision approves the discharge grounds and discharge plan, the proceeding ends with the decision and the discharge may proceed according to the discharge plan.

The Facility provided a Discharge Notice [ALJ Exhibit I] to the Appellant on [REDACTED] 2019. The Appellant then requested the hearing that took place at the Facility in New York County on March 21, 2018. The Appellant spoke on his own behalf. The Facility presented the following witnesses: the Appellant's treating physician, Shivani Chopra, M.D., Social Worker Eileen Gibbons and Social Work Director Meg Bondy. The ALJ received the following documents into the record:

ALJ Exhibit I	Notice of Hearing,
ALJ Exhibit II	Letter to the Parties with Attachment,
ALJ Exhibit III	Email among parties and Bureau of Adjudication.
Facility Exhibit A	Face Sheet, Written Statements and Cognitive Patterns,

Facility Exhibit B
Facility Exhibit C
Facility Exhibit D

Out-On-Pass Records,
Additional Out-On-Pass Record [REDACTED] 19,
Clinical Notes.

Appellant Exhibit 1
Appellant Exhibit 2

Letter from Disability Rights New York (DRNY),
Email from DRNY 4/5/19.

The ALJ left the record open following the hearing for the parties to offer additional exhibits into the record (Facility Exhibits C-D and Appellant Exhibits 1-2).

Following the hearing, the ALJ received an April 2, 2019 letter from Sarah Smith, a staff attorney from DRNY. Attorney Smith indicated that DRNY was then representing the Appellant, requested that the ALJ extend the time for the Appellant to submit additional documentation and that the ALJ re-convene the hearing to receive additional evidence and to allow the Appellant's counsel to cross-examine the witness who testified for the Facility on the first hearing day [Appellant Exhibit 1]. The ALJ granted both requests and the parties agreed to re-convene the hearing on April 10, 2019. The ALJ also extended the time-period for submitting additional documentation until April 10th as well.

On April 4, 2019, Attorney Smith informed the ALJ and Facility that DRNY was withdrawing as counsel to the Appellant [Appellant Exhibit 2]. The ALJ then cancelled the April 10, 2019 hearing and scheduled a conference call instead on that date with the Appellant and Ms. Bondy. During the conference call, the Appellant requested more time to submit documentation from [REDACTED] where the Appellant received in-patient treatment immediately prior to admission to the Facility. The ALJ granted the extension until April 15, 2019. The Appellant failed to submit any documentation by April 15th and has submitted no documentation since that time. The ALJ closes the record in this matter.

The record also included a digital audio recording on compact disc from the hearing (CDH) and from the conference call (CDCC). References to statements from the recordings will

reference the time and the CD on which the statement occurs (*e.g.* “CDH at 12:40” means that the statement occurred on the hearing CD at 12 minutes and 40 seconds into that recording).

Under the hearing procedures at §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under N.Y. Administrative Procedure Act 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 (3rd Dept. 1984), appeal dismissed 63 N.Y.2d 649. Under the procedures at SAPA § 306(4), an ALJ may take official notice of all facts, statutes and regulations for which a court may take judicial notice.

II. Findings of Fact

The matters in brackets following the findings reflect statements from the hearing recordings or exhibits in evidence [Ex] on which the ALJ relied in making the findings. If contradictory information appears elsewhere in the record, the ALJ considered that information and rejected it.

1. On [REDACTED] 2018, the [REDACTED]-year-old Appellant entered the Facility following hospitalization at [REDACTED] from [REDACTED], 2019 to [REDACTED] 2018, for [REDACTED], [REDACTED] pain and [REDACTED] [Ex A].

2. The Appellant was diagnosed with a [REDACTED], which was treated initially with the medication [REDACTED] and then with the medication [REDACTED] [Ex A].

3. The [REDACTED] was found to be positive for [REDACTED], which responded to treatment with oral antibiotics [Ex A].

4. In the week before the hearing, the Appellant complained about [REDACTED] around his [REDACTED] but refused to undergo a [REDACTED] examination to determine the cause for the [REDACTED] [Ex A].

5. The Appellant also complained about [REDACTED] from his [REDACTED] but refused a [REDACTED] test to check for [REDACTED] [CDH at 8:22].

6. The Appellant continues to take the [REDACTED] medication [REDACTED] which can cause [REDACTED] [CDH at 9:26].

7. The Appellant complained about [REDACTED] but refused to undergo a [REDACTED] Scan [Ex A].

8. The Appellant receives oral medications and no skilled treatment from the Facility [CDH at 11:29].

9. The Appellant ambulates with a walker and leaves the Facility independently on pass for several hours at a time [CDH at 28:32; Ex A, Ex B].

10. The Appellant has a voucher for housing with [REDACTED] which the Appellant received through the System [CDH at 19:50].

11. The Appellant's treating physician at the Facility, Shivani Chopra, M.D., diagnoses the Appellant as medically stable, with no need for a prolonged stay at the Facility [Ex A].

12. Dr. Chopra indicated that the Appellant needs a further work up for his reported [REDACTED] [REDACTED] with a [REDACTED] which can be done in the community after discharge to the shelter system [CDI 31:06].

13. The Appellant indicated that he lived in the System previously in about 2016 [CDH at 19:28].

III. Conclusions

Under the standards at Title 10 NYCRR § 415.2(k), a nursing home provides nursing and professional services twenty-four hours per day for patients who require those services, but do not require services in a general hospital. Title 10 NYCRR § 415.3(h)(1)(i)(2) allows involuntary discharge if a nursing home resident's health has improved sufficiently so that the resident no longer requires the services that the facility provides. The ALJ concludes from the testimony by Dr. Chopra, Ms. Gibbon and Ms. Bondy and from the Facility records in evidence [Hearing Exhibits A-D] that the Appellant's condition has improved so that the Appellant no longer requires skilled nursing care. The ALJ finds that the Facility has grounds to discharge the Appellant and that the Facility has also proposed an appropriate discharge plan.

The Appellant offered no credible evidence to show that he requires the skilled nursing care the Facility provides, even though the ALJ left the hearing record open following the hearing to receive documentation and then extended the time to receive documents. Although the Appellant cited symptoms such as [REDACTED] and [REDACTED] as evidence that he needs to remain in the Facility, he refused to undergo testing to determine the cause of the symptoms. Dr. Chopra testified that the Appellant can undergo such testing in the community. The Respondent also claimed that he can't leave the Facility due to the "Disability Law Act". He failed, however, to identify what disability he suffers, other than pain when he walks [CDH at :59]. The evidence showed that the Appellant is able to ambulate with a walker and to leave the Facility independently - for extended periods. The ALJ finds the evidence from the Facility more credible than the claims by the Appellant.

ORDER

NOW; after considering the request for Hearing, the testimony and the documents in evidence, the ALJ issues the following Order:

1. The ALJ rules that the Facility has demonstrated that the Appellant no longer requires nursing home care.

2. The Facility may discharge the Appellant immediately, pursuant to the discharge plan and to this Order.

Dated: Menands, New York
May 20, 2019



James F. Horan
Administrative Law Judge

To: Meg Bondy, Director of Social Work
The New Jewish Home - Manhattan
120 West 106th Street
New York, NY 10025

■ Resident
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