



Department of Health

ANDREW M. CUOMO
Governor

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

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

June 6, 2019

██████████
c/o The Riverside Premier Rehabilitation
and Healing Center
150 Riverside Drive
New York, New York 10024-2201

Ms. Marianne Kane, DSW
The Riverside Premier Rehabilitation
and Healing Center
150 Riverside Drive
New York, New York 10024-2201

CERTIFIED MAIL/RETURN RECEIPT

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

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

██████████ :

Appellant, :

from a determination by :

THE RIVERSIDE PREMIER REHABILITATION & :
HEALING CENTER :

Respondent, :

to discharge her from a residential health :
care facility :

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DECISION

-----X
By notice dated ██████ █ 2019, The Riverside Premier
Rehabilitation & Healing Center (the Facility) determined to
discharge ██████████ (the Appellant) from care in its facility.
The Appellant appealed the proposed discharge. A hearing was held
at the Facility on █ █, 2019, before **Dawn MacKillop-Soller,**
Administrative Law Judge. The Appellant was present at the hearing,
accompanied by certified ombudspeople Leah Zisfein and Charles
Gourgey. The Facility was represented by Marianne Kane, Director
of Social Services. The Discharge Notice is dated ██████ █ 2019,
and was marked ALJ Exhibit I. Johnathan Chung, Director of
Rehabilitation, Erica Imbert, social worker and Ms. Kane testified
for the Facility and presented Exhibits 1-2. The Appellant testified
on her own behalf and, with the assistance of ombudsperson Ms.

Zisfein, presented Exhibits A-E. An audio recording of the hearing was made.

At the completion of the hearing, the record was left open until June 3, 2019, for the Facility to assess whether additional physical therapy services are appropriate. On June 3, a telephone conference call was held with the parties and the Facility reaffirmed its position that no additional rehabilitation services will be provided and discharge of the Appellant to her home is appropriate. Recording June 3 @4:25, 8:04, 8:27, 8:45.

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]. The Appellant opposed the discharge plan, 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] [REDACTED] 2019, for short-term rehabilitation following surgery at [REDACTED] [REDACTED] to repair [REDACTED] to her [REDACTED] [REDACTED] resulting from a fall at her home. Following the surgery, a [REDACTED] [REDACTED] [REDACTED] was placed on the Appellant's [REDACTED] to [REDACTED] it for healing, which she continues to wear today. She takes daily medications for [REDACTED] and [REDACTED].

Exhibit 1; Recording @ 9:44, 1h:18:52.

2. The Appellant was discharged from physical therapy on [REDACTED] 2019. A physical therapy assessment performed on that date determined that the Appellant continues to require supervision in the form of standby assistance for transfers in and out of the tub and wheelchair, maneuvering her [REDACTED] [REDACTED] and setting up the wheelchair and using it outdoors. While the Appellant can walk up to [REDACTED] feet on level surfaces indoors, she requires the same level of supervision for safety purposes. Recording @ 1h:1:29, 1h:06:37, 1h:10:11, 1h:10:48, 1h:13:19, 1h:13:35, 1h:14:39.

3. The Facility proposes to discharge the Appellant to her home, an apartment where she lives alone, located at [REDACTED] [REDACTED] in [REDACTED] Exhibit A; Recording @ 35:10, 1h:13:03, 1h:15:22, 1h:16:53.

4. The Facility recommends home health care services, in-home rehabilitation services and "a visiting doctor from EMS house calls" to meet the Appellant's needs, but it has not yet arranged for such care. Exhibit 1; Recording 27:09, 27:58, 1h:04:24, 1h:13:54, 1h:18:42, 1h:20:06.

5. The Director of Rehabilitation, Johnathan Chung, concluded that while the Appellant's ambulation limitations present safety concerns, with home health care services in place, discharge to the home is safe and appropriate. His opinion was based on a review of rehabilitation notes made by other therapists and discussions with Facility staff. Recording 21:07, 1h:11:23 and June 3 Recording @ 8:27, 8:45.

6. The Appellant's clinical record does not contain a medical note from her physician referencing discharge, as required under 10 NYCRR 415.3(h)(1)(ii)(a).

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

Under 10 NYCRR 415.3(h)(1)(ii)(a), when the ground for discharge is that the Appellant's health has "improved sufficiently," the Appellant's clinical record required documentation of the discharge from her physician, which was never completed. While the Facility acknowledges this deficiency (Recording @ 59:32), it claims that it met its burden of proof by producing testimony from Mr. Chung, Director of Rehabilitation, and records in the chart from rehabilitation staff. The records and testimony produced by the Facility, however, 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 is appropriate.

Mr. Chung explained that the purpose in supervision by stand-by assistance is to mitigate risk and promote safety awareness, two factors that the Facility failed to evaluate prior to its discharge determination. Recording @ 1h:07:52. The Appellant was admitted to the Facility for short term rehabilitation on [REDACTED] [REDACTED] 2019, following [REDACTED] [REDACTED] surgery to her [REDACTED] [REDACTED]. Following the procedure, the Appellant required stand-by assistance supervision for maneuvering her wheelchair and [REDACTED] and for all transfers, including in and out of the bathtub and wheelchair, tasks Mr. Chung acknowledged still require the presence of another person to keep the Appellant safe. Recording @ 23:57, 24:32, 39:14, 40:06, 1h:02:46, 1h:22:52.

The Facility claims that these safety risks are abated by home health care aides and therapy services in the home, "EMS housecalls" and an "ambulette with a two man assist" upon discharge to carry the Appellant "up her stairs to her apartment," but the Facility has not shown that such arrangements have been adequately established. The coordination of these services is particularly important considering the Appellant's personal circumstances, which include that she lives alone, without any support to provide the requisite oversight for her ambulation challenges. The Facility concedes that a wheelchair,

commode and transfer bench for the bathtub are needed, but demonstrated its single attempt at delivering these items was unsuccessful. Recording @ 34:16, 38:06, 1h:01:29, 1h:02:46; 1h:03:55, 1h:06:37, 1h:07:52, 1h:10:48, 1h:13:19, 1h:14:39, 1h:15:22, 1h,22:00.

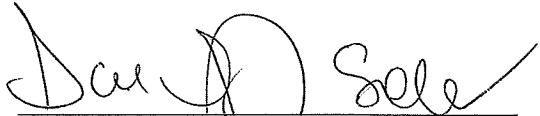
The Facility discontinued rehabilitation services on [REDACTED] [REDACTED] the effective date of Medicare's decision denying continuing medical coverage and contrary to the recommendation of her physician at [REDACTED] [REDACTED] that physical therapy services continue. The Facility admits that the Appellant continues to require physical therapy, yet has failed to establish that the necessary arrangements have been made for her to receive such services at her home. Exhibits D, E, 1 and 2; Recording @ 38:56.

I find the Facility failed to meet its regulatory obligation to produce documentation of the appropriateness of the discharge from the Appellant's physician, rendering its determination to discharge the Appellant inappropriate. I also find the Facility's discharge plan to transfer the Appellant to her home not appropriate because the Facility failed to show that home health care and physical therapy services have been arranged for the Appellant at her home. 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
June 6, 2019


DAWN MacKILLOP-SOLLER
Administrative Law Judge

To: [REDACTED]
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150 Riverside Drive
New York, New York 10024-2201

Ms. Marianne Kane, Director of Social Work
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