



ANDREW M. CUOMO Governor HOWARD A. ZUCKER, M.D., J.D. Commissioner SALLY DRESLIN, M.S., R.N. Executive Deputy Commissioner

August 2, 2019

## **CERTIFIED MAIL/RETURN RECEIPT**

c/o Holliswood Center for Rehabilitation and Health 195-44 Woodhull Avenue Hollis, New York 11423 Yunetta Baron, Director of Social Services Holliswood Center for Rehabilitation and Health 195-44 Woodhull Avenue Hollis, New York 11423

**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,

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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

Appellant,

from a determination by

Holliswood Center for Rehabilitation & Health, Respondent,

to discharge her from a residential health care facility.

Hearing Before:

Ann H. Gayle Administrative Law Judge

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Held at:

Holliswood Center for Rehabilitation & Health 195-44 Woodhull Avenue Hollis, New York 11423

Hearing Date:

Parties:

Holliswood Center for Rehabilitation & Health By: Yunetta Baron, Director of Social Services

Pro Se

July 25, 2019



DECISION

/ Holliswood

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 Holliswood Center for Rehabilitation & Health ("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 **Constant and Constant and Consta** 

- (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.

A digital recording of the hearing was made part of the record. Appellant appeared and testified on her own behalf. The following witnesses testified for Respondent: Yunetta Baron– Director of Social Services, and Zevi Lipschitz–Administrator.

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

Holliswood

<u>ALJ</u>:

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

Facility:

PT discharge summary
19 physician letter
19 physician progress notes
and 19 /19 medical progress notes
19 follow-up appointment with physician
19 BIMS score

Appellant was given the opportunity but did not offer any exhibits.

## <u>ISSUE</u>

Has Holliswood Center for Rehabilitation & Health 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, Holliswood Center for Rehabilitation & Health ("Holliswood") is a residential health care facility located in Hollis, New York. (Ex I)

2. Appellant, 2019, for short-term rehabilitation. Appellant was discharged from physical therapy on 2019, for when she reached her maximum potential with skilled services. Appellant is independent in her ADLs (activities of daily living), she goes out on pass independently, and she ambulates independently with no assistive devices. (Ex 1; Ex 2; Ex 3; T Lipschitz, Baron)

Holliswood

3. By notice dated 2019, Respondent advised Appellant that it had determined to discharge her on the grounds that her health has improved sufficiently so that she no longer needs the services provided by the Facility. (Ex I)

4. Appellant's past and present medical conditions include

. These conditions, including Appellant's risk factors for their continuation and/or potential recurrence in the future, can be treated in the community. (Ex 3; Ex 4; T Lipschitz, Baron)

5. Respondent's discharge plan is to discharge Appellant to the Shelter ("Shelter" or "Shelter" located at Shelter ("Shelter" or "Shelter" at Shelter ("Shelter" or "Shelter") located at Shelter (Shelter" or "Shelter") located at Shelter (Shelter") located at Shelter (Shelter"

will provide Appellant with transportation to the Shelter. (Ex I; T Baron)

6. 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 where she previously resided, is appropriate for Appellant who requires no skilled care and is very independent and capable of managing her medications and medical treatment in the community. (Ex 2; Ex 6; T Lipschitz, Baron)

7. Appellant has remained at Holliswood Center for Rehabilitation & Health pending the outcome of this proceeding.

#### **DISCUSSION**

The evidence presented by Respondent demonstrated that: Appellant completed her rehabilitative services; she is independent with her ADLs; she has no skilled needs; her medical conditions are stable and can be treated in the community; she is capable of managing her health care needs; she ambulates freely with no assistive devices; she regularly goes out on pass



independently; and discharge to the Shelter is a safe and appropriate discharge plan for Appellant. The Shelter would provide room and board and assist Appellant in finding more permanent housing.

Appellant does not wish to remain at the Facility; she alleges that "it is a terrible place where [her] health has gotten worse," but she believes discharge to the Shelter is not a safe plan for her due to her history of having experienced various violent episodes in her life, and her alleged **second second s** 

Ms. Baron testified that Appellant was referred to two assisted living facilities, and and and and and the second second

#### **CONCLUSION**

Respondent has proven that Appellant's health has improved sufficiently that she no longer requires skilled care, and that discharge to the Shelter where Appellant previously resided is appropriate for Appellant at this time. Speculation that past or current medical conditions might recur or worsen in the future is not sufficient to warrant remaining in a skilled facility when there are no skilled needs, and the discharge location has been shown to be appropriate.



Appellant indicated that if she is discharged to the Shelter she will not go there but she did not identify where she would go.

## **DECISION**

I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Holliswood Center for Rehabilitation & Health, is authorized to discharge Appellant in accordance with the 2019 discharge notice. The discharge shall occur no sooner than 2019, in order to give Appellant an opportunity (independently or with Respondent's assistance) to continue to explore and possibly secure discharge to a location other than 2019, if housing suitable and acceptable to her is secured prior to that date, or for any other reason Appellant chooses to leave.

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 August 2, 2019

Ann H. Gayle Administrative Law Judge

TO:

c/o Holliswood Center for Rehabilitation & Health 195-44 Woodhull Avenue Hollis, New York 11423

Yunetta Baron, Director of Social Services Holliswood Center for Rehabilitation & Health 195-44 Woodhull Avenue Hollis, New York 11423