



Department of Health

ANDREW M. CUOMO
Governor

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

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

January 2, 2019

CERTIFIED MAIL/RETURN RECEIPT

Meg Bondy, LCSW
The New Jewish Home
120 West 106th Street
New York, New York 10025



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

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

[REDACTED]

Appellant,

from a determination by

THE NEW JEWISH HOME/ MANHATTAN DIVISION

Respondent,

to discharge him from a residential health
care facility.

ORIGINAL

DECISION

The New Jewish Home/ Manhattan Division ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED], 2018, to [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On [REDACTED], 2018, a hearing was held before WILLIAM J. LYNCH, ESQ., ADMINISTRATIVE LAW JUDGE.

The hearing was held in accordance with the Public Health Law of the State of New York; Part 415 in Volume 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"); Part 483 of the United States Code of Federal Regulations ("CFR"); the New York State Administrative Procedure Act ("SAPA"); and 10 NYCRR Part 51.

Evidence was received and witnesses were examined. An audio recording of the proceeding was made. The hearing was held at the offices of the New York State Department of Health, 90 Church

Street, New York, New York. The following individuals were present for the hearing: Meg Bondy, Director of Social Work; and Julio Martinez, R.N., Nurse Manager. The Resident failed to appear at the hearing.

STATEMENT OF THE CASE

On [REDACTED] 12, 2018, the Facility provided the Resident with a discharge notice which proposed to discharge him on [REDACTED] 2018. The stated reason for the discharge was that the Resident's health had improved sufficiently so that he no longer required the services provided by a skilled nursing facility. The proposed discharge location was the [REDACTED] Shelter, [REDACTED]

[REDACTED].

The Resident requested an appeal of the discharge decision on [REDACTED] 2018, and he remained in the Facility until [REDACTED] [REDACTED] 2018, when he left following an incident which resulted in the police being called to the Facility because the Resident had been acting [REDACTED] toward other residents and the staff.

STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether the Facility has established a basis which permits the Resident's discharge from the Facility and whether the proposed discharge

plan was appropriate. The Facility has the burden of proving its case by substantial evidence (10 NYCRR § 415.3[h][2][iii], SAPA § 306[1]).

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Citations in parentheses refer to testimony or exhibits. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. The Resident is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2018, for a prescribed course of treatment with [REDACTED] antibiotics. (Facility Ex. 1, 3; Recording @ 2:30).

2. The course of antibiotic treatment was completed, and the Facility's interdisciplinary care team determined that the Resident no longer required skilled nursing services and could safely be discharged. (Recording @ 4:00).

3. On [REDACTED] [REDACTED], 2018, the Facility issued a discharge notice to the Resident which proposed discharge to the [REDACTED] Shelter. (Facility Ex. 2).

4. The Resident's attending physician determined that the Resident no longer required placement in a skilled nursing facility and that the discharge plan was appropriate. (Facility Ex. 3).

ANALYSIS AND CONCLUSIONS

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR 415.3[h][1]). The Facility alleged that the Resident's discharge is permissible pursuant to 10 NYCRR 415(h)(1)(i)(a)(2), which states:

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.

Although the Resident was notified of the hearing time and location, he failed to appear at the hearing. The Facility established through testimony and documents that the Resident has no skilled nursing needs and that he has completed the prescribed course of antibiotic treatment which was the reason for his admission. The Resident is a [REDACTED]-year-old male who resided with his [REDACTED] prior to his admission and can independently perform all activities of daily living. The Resident advised the Facility social worker that he was not able to return to the [REDACTED] apartment. The Resident had no known source of income or disability

so the Facility determined that the [REDACTED] Shelter was the only available option for discharge. The Facility had planned to provide the Resident with prescriptions and arrange transportation to the Shelter at the time of discharge, but the Resident left when the police came to the Facility on [REDACTED], 2018.

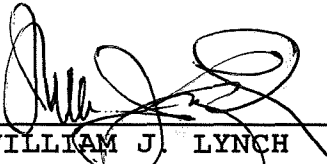
Based upon the evidence produced at the hearing, I find that the Resident no longer needs to reside in a skilled nursing facility and that he can obtain any required follow-up medical care on an outpatient basis while living in the community.

DECISION AND ORDER

1. The Resident's appeal of the Facility's discharge determination is denied.

2. 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: Albany, New York
January 2, 2019**



WILLIAM J. LYNCH
Administrative Law Judge