



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

October 25, 2019

CERTIFIED MAIL – RETURN RECEIPT

██████████
c/o Mount Sinai St. Luke's Hospital
1111 Amsterdam Avenue
New York, New York 10025

Lorelei Fields
Mount Sinai St. Luke's Hospital
1111 Amsterdam Avenue
New York, New York 10025

Michelle Matics, Assistant VP
Casa Promesa Residential Health Care Facility
308 East 175th Street
Bronx, New York 10457

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 :

[REDACTED]

Appellant,

from a determination by

CASA PROMESA RESIDENTIAL
HEALTH CARE FACILITY

Respondent,

to discharge her from a residential health :
care facility. :

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ORIGINAL

DECISION

Hearing Before: Matthew C. Hall
Administrative Law Judge

Held at: Mount Sinai St. Luke's Hospital
1111 Amsterdam Avenue
New York, New York 12601

Hearing Date: October 17, 2019

Parties: Casa Promesa Residential
Health Care Facility
By: Michelle Matics

[REDACTED]

By: Lorelei Fields

JURISDICTION

Without notice, Casa Promesa Residential Health Care Facility (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) § 415.3(h).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing

Facility Exhibits: A - Event Summary
B - Consultation Request and Report
C - Patient Review Instrument [REDACTED]-2018)
D - Patient Review Instrument [REDACTED]-2019)
E - Patient Review Instrument [REDACTED]-2019)
F - Patient Review Instrument [REDACTED]-2019)

Facility Witnesses: Michelle Matics - Asst. VP Acacia Network
Felipe De Los Santos - Deputy Counsel
Dr. Mekonnen Abebe - Medical Director

Appellant Witness: Lorelei Fields, LMSW - Senior Social Worker
Dr. Sarah Shihadeh - Attending of Record
Scott Ferguson, LCSW - Director, Care Trans.
Chinkata Ikpeoha - Clinical Nurse Manager

ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its 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. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Facility is a Nursing Home located in the Bronx, New York.

2. The Appellant is a [REDACTED]-year-old woman who was originally admitted to the Facility on [REDACTED] 2018, from [REDACTED] [REDACTED] for continuation of care as a long-term care patient. (Ex. A.)

3. Her diagnoses included [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (ALJ I.)

4. Within months of transfer to the Facility, the Appellant became [REDACTED] and [REDACTED] [REDACTED] towards other residents at the Facility. (Ex. A.)

5. During the period between [REDACTED] and [REDACTED] 2019, the Appellant continued to behave [REDACTED] including times when she [REDACTED] assaulted other residents and medical staff. (Ex. A., T. Abebe.)

6. Finally, on [REDACTED] [REDACTED] 2019, the Appellant [REDACTED] assaulted two nursing staff members, two residents, and a security guard. (Ex. A.)

7. Due to her [REDACTED] behaviors, upon recommendation of the Facility's [REDACTED] the resident was transferred to [REDACTED] [REDACTED] Hospital's Emergency Room. (Ex. A.)

8. At this point, the Appellant was still a resident of the Facility and did not request a discharge. (Ex. A.)

9. Soon thereafter, the Appellant eloped from the Emergency Room. After a few weeks, during which the Appellant could not be located, the Facility was contacted by Mt. Sinai St. Luke's Hospital (the hospital) and informed that the Appellant was hospitalized in their care. (Ex. A., T. Abebe.)

10. After treating the Appellant, the [REDACTED] unit at the hospital determined that the Appellant was not suitable for long term [REDACTED] care and attempted to return her to the Facility. (ALJ I.)

11. The Facility informed the hospital, however, that they were unable to manage the Appellant's behavior and would not readmit her. The Facility proposed no other discharge options. (Ex. A.)

12. The Facility did not provide the Appellant with a discharge notice. (T. Matics.)

13. The Appellant has remained at the hospital pending the outcome of this appeal.

APPLICABLE LAW

A residential health care facility (also referred to in the Department of Health Rules and Regulations as a nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. Public Health Law §§ 2801(2)(3); 10 NYCRR § 415.2(k).

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR 415.3[h][1](i)(a)).

Pursuant to 10 NYCRR §415.3, "discharge does not include...discharge made in compliance with a request by the resident...as evidenced by a signed and dated written statement."

The Facility did not provide a discharge notice to the Appellant, and therefore has not alleged that the Resident's discharge is permissible pursuant to any of the relevant sections of the regulation.

Under the hearing procedures at 10 NYCRR §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under the New York State Administrative Procedures Act (SAPA) § 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 a 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.

DISCUSSION

Reason for Discharge

As discussed above, in violation of 10 NYCRR 415.3[h][1](iv), the Facility did not provide a discharge notice to the Appellant. Accordingly, the Facility did not provide a reason for discharge as required by the regulation.

The Appellant was certainly a challenge for the Facility during her stay there. On several occasions she was [REDACTED] and [REDACTED] [REDACTED] to both the Facility's staff and other residents. On [REDACTED] [REDACTED] 2019, she physically [REDACTED] another resident causing her [REDACTED] injury. On [REDACTED] [REDACTED], 2019, the Appellant entered the room of another resident who was [REDACTED] and [REDACTED] her, resulting in [REDACTED] to the other resident's [REDACTED]. Several similar incidents occurred between that occasion and [REDACTED] 2019, when she "[REDACTED] two nursing staff members, two residents and a security (guard)." (Ex. A.) As a result of the [REDACTED] incident, the Appellant was transferred to [REDACTED] [REDACTED] Hospital Emergency Room for further [REDACTED] care. Soon after, she eloped from the emergency room and admitted herself into the hospital.

A strong case can be made by the Facility that the Appellant's discharge is appropriate in accordance with 10 NYCRR §§ 415.3(h)(1)(i)(a)(3) and (4), which states:

The transfer or discharge is appropriate because the safety and health of individuals in the facility (are) endangered.

A further case can be made by the Facility that the Appellant's discharge is appropriate in accordance with 10 NYCRR §§ 415.3(h)(1)(i)(a)(1), which states:

The transfer or discharge is appropriate because the resident's needs cannot be met after reasonable attempts at accommodation in the Facility.

During the hearing, the Facility claimed that they did not, in fact, discharge the Appellant. (T. Matics, Abebe.) They simply refused to readmit her. Pursuant to 10 NYCRR §§ 415.3(h) however, if a resident does not voluntarily sign a waiver agreeing to a discharge, it will be considered an involuntary discharge by the Facility.

A decision need not be reached, however, regarding the Facility's reasons for discharging the Appellant. In addition to not providing a discharge notice to the Appellant, the Facility's intended discharge location for the Appellant is certainly not appropriate.

Discharge Location

Pursuant to 10 NYCRR § 415.3(h)(1)(vi), it is the Facility's legal obligation to develop a suitable discharge plan for the Appellant. Without notice, and without consultation with the Appellant or her family, the Facility decided not to readmit the Appellant after she was cleared for release from the Hospital. By

doing so, the Facility essentially transferred its responsibility to find appropriate long-term care to the Hospital.

The Facility bears responsibility for the Appellant's care and any discharge planning and it is not the Hospital's legal obligation to procure a suitable discharge plan for the Appellant. Additionally, while an appropriate long-term care plan is being considered for the Appellant, an acute care facility is not an appropriate discharge location for a nursing home resident. It was discussed during the hearing, without dissent, that there are several risks associated with a resident's long-term stay in a hospital. As discussed in a previous decision:

When asked if there are any risks associated with keeping the Appellant in an acute care setting, [Nurse Practitioner] stated that 'there are several risks.' This is 'not a safe long-term care environment.' In addition to the 'lack of stimulation' provided in an acute care setting, the Appellant would be exposed to 'hospital pathogens. The Hospital is not a safe place to be. It is a perfect place to be when you are sick, but not a place to be long-term. Any time you place a ... patient in this setting, you are running a high risk of developing a hospital-acquired infection, that otherwise could have been avoided.' Matter of Judy Baxter, Dept. of Health Admin Decision, November 20, 2018.

Nursing Home Medical Director, Dr. Mekonnen Abebe (Dr. Abebe) argued that the Facility cannot handle the resident. The resident requires "one-to-one care," and the Facility is not capable of

providing such care. Assistant VP, Michelle Matics (Matics) agreed with Dr. Abebe that the Facility simply cannot provide the level of care required by the Appellant. Dr. Abebe and Ms. Matics also argued that placement into a facility that could provide [REDACTED] care could more effectively be accomplished by the Hospital and not by the Facility. (T. Abebe, Matics.) These statements belie the requirements set forth in 10 NYCRR § 415.3(h)(1)(vi). It is not the Hospital's legal obligation to procure a suitable discharge plan for the Appellant. The Facility bears responsibility for the Appellant's care and any discharge planning.

Conclusion

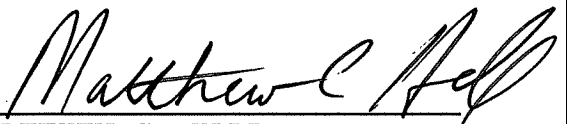
In violation of 10 NYCRR 415.3[h][1](iv), the Facility did not provide a discharge notice to the Appellant. Further, the Appellant's discharge to the Hospital, an acute care facility, is not an appropriate discharge plan. While the Facility is legally authorized to remove the Appellant from its premises for medical evaluation and treatment, there is no legal authority for the Facility to refuse to re-admit the Appellant after she is cleared by the evaluating hospital to be able to return. The Facility's determination fails to comport with regulatory requirements and is not sustained.

DECISION AND ORDER

Casa Promesa Residential Health Care Facility has not established that the Appellant's discharge was necessary and the discharge plan appropriate.

1. Casa Promesa Residential Health Care Facility is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the Facility, pursuant to 10 NYCRR § 415.3(h)(1)(vi).
2. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Laws and Rules.

DATED: Albany, New York
October 25, 2019


MATTHEW C. HALL
Administrative Law Judge

To:

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New York, New York 10025

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