



Department of Health

ANDREW M. CUOMO
Governor

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

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

December 6, 2019

CERTIFIED MAIL/RETURN RECEIPT

Maureen Peters, DSW
The Silvercrest Center for Nursing
& Rehabilitation
144-45 87th Avenue
Briarwood, New York 11435

██████████
c/o The Silvercrest Center for Nursing
& Rehabilitation
144-45 87th Avenue
Briarwood, New York 11435

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: nm
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

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

██████████ :

Appellant, :

from a determination by :

Silvercrest Center for Nursing :
and Rehabilitation :

Respondent, :

to discharge him from a residential health :
care facility :

COPY

DECISION

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A Notice of Transfer/Discharge dated ██████████ ██████████, 2019 was issued to ██████████ ██████████ (Appellant) by Silvercrest Center for Nursing and Rehabilitation (Facility). The Appellant appealed the Facility's proposed discharge. On November 14, 2019, a hearing was held before Dawn MacKillop-Soller, Administrative Law Judge, at Silvercrest Center for Nursing and Rehabilitation, located at 144-45 87th Street, Briarwood, New York. Evidence was received (ALJ I and Facility 1-2). An audio recording of the hearing was made.

The Appellant was present at the hearing and represented himself. The Facility was represented by Maureen Peters, Director of Social Work. Stanley Ramah, Assistant Director of Nursing, Mohammad Syed, Director of Rehabilitation and Ms. Peters testified on behalf of the Facility. The Appellant testified on his own behalf. The

record remained open until December 3, 2019 for the Facility to complete the referral process for shelter placement.

Issues

Has the Facility met its burden of proving that the Appellant's health has improved sufficiently so he no longer needs skilled nursing care services, and that its discharge plan is appropriate?

Findings of Fact

1. The Appellant, age [REDACTED] was admitted to the Facility for short term rehabilitation following his hospital treatment for [REDACTED], which resolved with antibiotic treatment. His prior medical history includes [REDACTED] and [REDACTED] surgery. [Exhibit 1; Recording @ 8:20; 23:08.]

2. The Appellant completed occupational and physical therapies and has no medical restrictions for weight bearing or ambulation. He freely ambulates inside and outside the Facility with a rollator. [Exhibit 1; Recording @ 26:57.]

3. The Appellant does not have any cognitive limitations and can manage his own medications, which include [REDACTED] as needed. [Recording @ 23:50].

4. The Appellant has met his treatment goals and is independent with his activities of daily living. [Recording @ 19:04, 19:13.]

5. The Facility's proposed discharge plan is to transfer the Appellant to the [REDACTED]'s Shelter, located at [REDACTED] [REDACTED] [REDACTED]. [Exhibit 1.]

6. The Appellant does not require skilled nursing care. He is desirous of staying at the Facility and opposes the discharge plan. He testified that the transfer plan is not appropriate due to pain to his [REDACTED]. [Recording @ 12:25.]

7. The Appellant's care team at the Facility and the Facility's physician, Ashwin Trivedi, M.D., have determined that the Appellant is not in need of nursing home care and that the Respondent's discharge plan is safe and appropriate. The physician's opinion is based on a review of the medical records and discussions with Facility staff. [Exhibit 1; Recording @ 19:13.]

Applicable Law

1. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(i). 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:

(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 "discharge or transfer is/was necessary and the discharge plan appropriate." 10 NYCRR 415.3(i)(2)(iii)(b).

Discussion

The Facility proved by substantial evidence that the Appellant's health has improved sufficiently so he no longer needs skilled nursing care and that its discharge plan to transfer the Appellant to the [REDACTED] Shelter is appropriate. The Appellant was admitted to the Facility for short term rehabilitation for [REDACTED] to his [REDACTED], which has since completely resolved. In addition to managing his own medications and his independence in his activities of daily living, the Appellant has reached his maximum level of improvement and achieved his rehabilitation goals. The Facility's physician and the interdisciplinary care team agree he no longer requires skilled nursing care. [Exhibit 1; Recording @ 19:04, 19:13, 26:57, 27:32.]

The Appellant opposes the discharge on the ground that he requires the Facility's skilled nursing services for his [REDACTED] pain. Stanley Ramah, Assistant Director of Nursing, testified,

however, that the Appellant requires no medical treatment to his [REDACTED] [REDACTED] and that his [REDACTED] [REDACTED] while using the rollator are steady. Mohammad Syed, Director of Rehabilitation, confirmed that the Appellant requires no assistance with his activities of daily living and that he ambulates using the rollator on a regular basis outside the Facility. [Recording @ 19:08, 19:20, 21:12, 21:20, 27:01.]

The Appellant's dislike of shelter environments is not a reason nor does it establish a need for skilled nursing services in a nursing home. His complaint of pain to his [REDACTED] [REDACTED] which is unsubstantiated by the Facility's medical evidence, also fails to justify such care. Nursing homes provide nursing care to sick, invalid, infirm, disabled or convalescent persons who need frequent nursing services or other professional services but who do not need the services of a general hospital. PHL § 2801; 10 NYCRR 415.2(k). They are not appropriate or necessary for residents who do not require on-site, high level and continuous medical care. [Recording @ 10:21, 12:25, 35:44.]

The Facility encouraged the Appellant, who does not have a home or a caretaker in the community, to explore alternative discharge planning options, such as staying with family or a friend, but none have proven successful. 10 NYCRR 413.3(i)(1)(vii). In considering the Appellant's personal circumstances and the opinions of his care team that his uncomplicated mobility challenges can be met in a

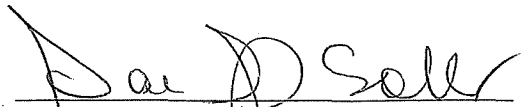
shelter, I find transfer to the [REDACTED] Shelter appropriate. This placement will further the Appellant's goals to return to work and improve his physical health outside of a nursing home environment. [Exhibit 1; Recording @, 19:54, 35:51.]

I find the Facility's determination to discharge the Appellant appropriate because the Facility has proven by substantial evidence that the Appellant's condition has improved sufficiently so that he no longer needs skilled nursing services. I also find the discharge plan to transfer him to the [REDACTED] Shelter appropriate. The Appellant may consent to his discharge to a different location if he is a suitable candidate and placement is available; however, the Facility is authorized to transfer the Appellant in accordance with its discharge plan on or after December 20, 2019.

Order

1. The Facility is authorized to discharge the Appellant to the [REDACTED] Shelter on or after [REDACTED], 2019;

Dated: Albany, New York
December 6, 2019


Dawn MacKillop-Soller
Administrative Law Judge

To:

████████████████████
Silvercrest Center for Nursing and Rehabilitation
144-45 87th Avenue
Briarwood, New York 11435

Ms. Maureen Peters, Director of Social Work
Silvercrest Center for Nursing and Rehabilitation
144-45 87th Avenue
Briarwood, New York 11435