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# 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 30, 2020

**CERTIFIED MAIL/RETURN RECEIPT**

Sheila Matthews, DSW  
Fairview Nursing Care Center  
69-70 Grand Central Parkway  
Forest Hills, New York 11375

[REDACTED]  
(Via Fax)

**RE: In the Matter [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: 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

**Fairview Nursing Care Center**

Respondent,

to discharge her from a residential  
health care facility.

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**DECISION**

Hearing Before: Natalie J. Bordeaux  
Administrative Law Judge

Held at: Fairview Nursing Care Center  
69-70 Grand Central Parkway  
Forest Hills, New York 11375

Hearing Date: January 17, 2020

Parties: Fairview Nursing Care Center  
69-70 Grand Central Parkway  
Forest Hills, New York 11375  
By: Sheila Mathew, Director of Social Work

██████████  
*Pro Se*

**JURISDICTION**

By notice dated ██████████, 2019, Fairview Nursing Care Center (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge ██████████ (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

**HEARING RECORD**

Facility witnesses: Aura Panganiban, Social Work Coordinator  
 Merced Jarina, Director of Rehabilitation  
 Pamela Sosing, Nurse Manager

Facility exhibits: 1-9

Appellant witnesses: ██████████, Appellant (by telephone)<sup>1</sup>

The notice of hearing, discharge notice, and the accompanying cover letter were marked as ALJ Exhibit I. A digital recording of the hearing was made.

**ISSUES**

Has Fairview Nursing Care Center established that its determination to discharge the Appellant was correct and that its discharge plan was appropriate?

**FINDINGS OF FACT**

1. The Appellant is a ██████-year-old female who was transferred from ██████ Hospital to the Facility on ██████, 2019 for short-term rehabilitation for a ██████████ sustained in a ██████████. (Exhibit 6.)
2. By notice dated ██████████ 2019, the Facility determined to discharge the Appellant, effective ██████████ 2019, because her health has improved sufficiently that she no longer

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<sup>1</sup> Although the Appellant was advised of the time and place of this hearing by notice dated January 7, 2020, she contacted the Bureau of Adjudication less than one hour before the scheduled start time to explain that she was physically unable to attend the hearing. As an accommodation, the Appellant was permitted to participate by telephone. (Recording @ 0:55.)

requires the services provided by the facility. The notice advised the Appellant that she would be discharged to ██████████ Shelter (██████████) located at ██████████ A ██████████, where she had stayed before her hospitalization and admission to Fairview. (Exhibit 1; Recording @ 7:27.)

3. The Appellant does not require skilled nursing care and is independently able to perform activities of daily living with use of an assistive device for ambulation. (Exhibits 6-8; Recording @ 21:50.)

4. The Appellant's clinical record contains documentation from the Appellant's physician and interdisciplinary care team that the Appellant's condition has improved such that she no longer requires the services of a skilled nursing facility and that her discharge to the shelter is appropriate. (Exhibits 2, 3 and 5.)

5. On ██████████ 2019, the Appellant was discharged and transferred to ██████████ Upon entering ██████████ she advised intake staff that she could not climb stairs. Later that day, she was transported to ██████████ Shelter in ██████████ where she continues to stay. (Recording @ 25:24.)

6. On December 9, 2019, the Appellant requested this hearing to contest the Facility's discharge determination.

#### APPLICABLE LAW

A residential health care facility (also referred to in the 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).

Department regulations at 10 NYCRR § 415.3(i) describe the transfer and discharge rights of residential health care facility residents. They state, 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:

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(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;

The residential health care facility must prove by substantial evidence that the discharge was necessary and the discharge plan appropriate. 10 NYCRR § 415.3(i)(2)(iii)(b); State Administrative Procedure Act § 306(1).

**DISCUSSION**

By notice dated ██████████ 2019, the Facility determined to discharge the Appellant that same day because her health has improved sufficiently that she no longer requires the services provided by the facility. (Exhibit 1.) The Appellant requested this hearing two weeks after she was discharged to contest the discharge and the discharge plan. (Recording @ 3:05.)

The Appellant had been admitted to the Facility on ██████████ 2019 for short-term rehabilitation to restore her functional mobility after ██████████. (Exhibits 6-9.) She received physical and occupational therapy at the Facility six days each week. After ambulatory surgery on ██████████ 2019 for the ██████████ and ██████████ to repair her ██████████, the Appellant temporarily experienced

further reduction in her functional abilities. Pursuant to physician's orders, the Appellant was not allowed to bear weight on her ██████████. Once her ██████████ surgeon cleared this restriction from her rehabilitative therapies, the Appellant made steady gains. (Exhibits 7 and 8; Recording @ 11:53.)

One major objective of the Appellant's rehabilitative therapies was to ensure that she would be able to climb ██████████ flights of stairs independently in order to safely return to her ██████████ accommodations at ██████████ upon discharge. (Recording @ 7:27, 17:07.) By ██████████ the Appellant was independently capable of performing all activities of daily living, using a cane for ambulation and climbing up to two flights of stairs. (Exhibit 7; Recording @ 16:05.)

The Appellant's medical conditions were stable well before the date of discharge. She received antibiotic therapy on ██████████ 2019, which was completed by the end of that month. From ██████████ onward, she did not receive skilled nursing or specialized medical care from Facility staff. Although she received an ██████████ for ██████████ in ██████████ this was administered as a preventive measure which may be administered in an outpatient setting. (Exhibit 6; Recording @ 19:47.)

After the ██████████ on ██████████, the Appellant was prescribed pain management medication which she continued to take daily. Her ██████████, which was the basis for her short-term rehabilitation stay, healed. (Exhibit 4.) The Appellant is able to access her medical care, including ██████████ and pain management, in the community. (Recording @ 17:55, 21:23.)

During the hearing, the Appellant agreed that her health conditions do not need to be managed in a nursing home setting. (Recording @ 36:12.) However, she stated that she experienced ██████████ painkillers that she was receiving at the Facility, which



subsequently required treatment at a hospital. (Recording @ 32:00.) She expressed dissatisfaction with her access to health care and medications post-discharge. (Recording @ 38:56.)

Before she was discharged, the Appellant received written instructions to promptly schedule an appointment with her community physician to ensure continuity of care. (Exhibit 5.) The Appellant has also had a community-based social worker before, during and after her stay at the Facility to assist her with any questions regarding coordination of care. (Recording @ 30:00.) The Facility has established that the Appellant's health has improved sufficiently so that she does not require the services provided by the Facility.

In accordance with the █, 2019 discharge notice, the Appellant was discharged to █ a █ shelter in the █ where she had stayed before her hospitalization and short-term rehabilitation. (Recording @ 7:27.) That same day, however, she was transferred to █ Shelter in █ and assigned a bed on the █ floor. (Recording @ 26:43.) The Appellant has continued to stay at this shelter since her discharge and even participated in this hearing by telephone from that location. (Recording @ 23:43.)

The Appellant expressed disagreement with the location to which she was discharged and "the way" in which she was discharged. (Recording @ 3:05.) Despite acknowledging that she received and signed the discharge notice, the Appellant claimed that other options were not explained to her and that she did not understand the discharge process. (Recording @ 24:23, 34:08.)

While the Appellant may have felt overwhelmed when advised that she would be discharged, the record reflects that the Facility made continued efforts to discuss discharge



planning with her during the two months leading up to her discharge. On [REDACTED] 2019, the Appellant advised Facility Director of Social Work Sheila Mathew that she did not want to return to [REDACTED] and would prefer a different shelter. She also stated that she did not want to be discharged to a family member's home. After that conversation, the Appellant refused to discuss discharge planning for several weeks, despite repeated attempts by staff in multiple disciplines to engage her in such discussions. On [REDACTED] the Appellant advised Facility psychologist Dr. Brody that she did not want to return to [REDACTED] and did not know if discharge to her [REDACTED] home was feasible. She also asked for permission to remain at the Facility until her next appointment with the [REDACTED] surgeon. The Facility complied with that request. (Exhibit 6.)

After returning from a follow-up appointment with her [REDACTED] surgeon on [REDACTED] [REDACTED] the Appellant attended a discharge planning meeting with her interdisciplinary care team. The Appellant's case manager informed the Appellant of a possible discharge to an assisted living facility instead of a shelter. The Appellant dismissed this option because she was unwilling to use her Supplemental Security Income (SSI) towards the cost of her stay. (Exhibit 6.) With the elimination of all alternatives, the Facility determined to discharge the Appellant to Stadium.

During the hearing, the Appellant asserted that intake staff at [REDACTED] refused to accept her when she was transported there and that Facility social workers were informed that she could not be discharged to that shelter. (Recording @ 25:24.) The Appellant's account of the incident is incomplete. Although Facility Social Work Coordinator Aura Panganiban confirmed receiving a phone call from [REDACTED] shortly after the Appellant's discharge regarding its inability to accept the Appellant because she told them that she could not climb stairs, Ms.

Panganiban was previously given explicit instructions from the shelter system that the Appellant was to be transported to █ upon discharge. (Recording @ 27:50.)

On █ 2019, in adherence to current requirements instituted by the New York City Department of Homeless Services (DHS), Facility social workers submitted an electronic health care facility referral application to █ seeking approval for the Appellant to be discharged to █. After the application to return the Appellant to █ was accepted, Ms. Panganiban inquired as to whether the Appellant could be referred to a shelter with better elevator access. █ Social Services Director advised the Facility that the Appellant was required to return to █ because it was listed as her “official shelter.” If, upon Appellant’s arrival, █ intake staff deemed the Appellant’s placement inappropriate, █ would notify its DHS administrator, who would then find a bed for the Appellant in another shelter. (Exhibit 9.)

The shelter-referral process worked exactly as Ms. Panganiban was advised. Contrary to the Appellant’s claims, the Appellant was not determined to be medically inappropriate for shelter placement. She was instead quickly transported to and accommodated at another shelter with an available bed on the █ floor to ensure easier access.

The Facility clearly did not rush to discharge the Appellant. She had not needed skilled care for several months before discharge, and approval for her discharge to █ had been given in █. Staff made multiple attempts to engage the Appellant and identify an agreeable discharge location and she consistently refused to cooperate. The Facility abided by the Appellant’s request to postpone her discharge until after her █ surgeon appointment on █. Staff from the nursing, social work, and rehabilitation disciplines met with the

Appellant to orient her only after she returned from that appointment and staff received confirmation from the surgeon that her [REDACTED] had healed. (Exhibit 4.)

The Facility fulfilled its responsibilities toward the Appellant, a short-term rehabilitation patient. As a skilled nursing facility, it successfully assisted the Appellant with regaining her physical independence to effectuate a safe return to the community. The Facility provided her with sufficient orientation and preparation to ensure a safe and orderly discharge in the form of a discharge plan which addressed her medical needs and how those would be met after discharge. 10 NYCRR § 415.3(i)(1)(vi).

Despite multiple efforts to encourage her to participate in discharge planning efforts, the Appellant rejected alternatives to shelter placement without proposing other options. As evidenced by DHS' acceptance of the referral application, the Appellant meets the criteria for shelter placement set forth in 18 NYCRR § 491.4. These circumstances establish that the Facility's discharge plan was appropriate. It is now the responsibility of DHS to assist the Appellant with identifying permanent housing solutions.

#### **DECISION**

Fairview Nursing Care Center has established that its determination to discharge the Appellant was correct, and that its discharge plan was appropriate.

Dated: January 29, 2020  
Menands, New York



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Natalie J. Bordeaux  
Administrative Law Judge