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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

February 25, 2020

CERTIFIED MAIL/RETURN RECEIPT

Mr. [REDACTED]
c/o Paramount at Somers Rehabilitation
and Nursing Center
189 Route 100
Somers, New York 10589

Kira Capowski, Director of Nursing
Paramount at Somers Rehabilitation
and Nursing Center
189 Route 100
Somers, New York 10589

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 PARAMOUNT AT SOMERS
REHABILITATION AND NURSING,

Respondent,

to discharge him from a residential health
care facility.

COPY

DECISION

Hearing Before:

Matthew C. Hall
Administrative Law Judge

Held at:

The Paramount at Somers
Rehabilitation and Nursing
189 Route 100
Somers, New York 10589

Hearing Date:

February 5, 2020

Parties:

The Paramount at Somers
Rehabilitation and Nursing Center
By: Kira Capowski - D.O.N.

By: [REDACTED]

JURISDICTION

By notice dated [REDACTED] [REDACTED] 2019, The Paramount at Somers Rehabilitation and Nursing Center (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 and Discharge Notice

Facility Exhibits: 1 - Facility Progress Notes and statements
2 - Discharge Notice

Facility Witnesses: Alexis Schifano - RN Unit Manager
Kira Capowski - RN Director of Nursing
Soomya Thomas - Assistant Administrator

Appellant Exhibit: A - Detailed journal from [REDACTED] 2015 to [REDACTED]/2019

Appellant Witness: [REDACTED] - Appellant's [REDACTED]
[REDACTED] - Appellant's [REDACTED]

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 Somers, New York.

2. The Appellant is a [REDACTED]-year-old man who was originally admitted to the Facility in [REDACTED] 2017. He was originally admitted for short-term rehabilitation after a [REDACTED] (Ex. 1.)

3. As a result of the accident, the Appellant incurred a "[REDACTED] [REDACTED]," rendering him [REDACTED] (Ex. 1.)

4. By notice dated [REDACTED], 2019, the Facility determined to discharge the Appellant on [REDACTED] [REDACTED] 2020 because "the Facility cannot meet the resident's needs as evidenced by:

Resident's behaviors of [REDACTED] which impairs the well-being of staff and other residents." (ALJ. I.)

5. The Facility determined to discharge the Appellant to [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] in [REDACTED] [REDACTED]. (ALJ. I.)

6. Shortly after his admission to the Facility, the Appellant was transferred to a long-term unit within the Facility. (Ex. 1.)

7. On [REDACTED], 2018, the Appellant was transferred to the "[REDACTED] Unit" for long-term care. There, his behaviors became [REDACTED] and [REDACTED] toward the nursing staff. He [REDACTED] the Facility staff with "[REDACTED] and [REDACTED]" (Ex. 1.)

8. The Appellant was then transferred to the "[REDACTED] Unit" on [REDACTED] 2019. While at the [REDACTED] Unit, the Appellant's behaviors continued. He complained about the staff and used [REDACTED] toward them. (Ex. 1.)

9. On [REDACTED] [REDACTED] 2019, the Appellant was moved to the "[REDACTED] Unit," so that he would not have to use the elevator. He continued with his [REDACTED] behavior, however, using [REDACTED] statements to his caregivers on that unit. (Ex. 1.)

10. Finally, on [REDACTED] 2019, the Appellant was moved to the long-term "[REDACTED] Unit," where he was provided with his own private room in order to reduce or eliminate further altercations with the Facility's staff. (Ex. 1.)

11. Despite being accommodated by the Facility at every turn, the Appellant continued his [REDACTED] behavior. He also stated his desire to be transferred to another Facility. At his request, the Facility sent Patient Review Instruments (PRIs) to various other skilled nursing facilities in the region. One of those facilities, [REDACTED], indicated that they would be willing to accept the Appellant as a new resident. The Appellant, however, turned down the offer and chose to remain at the Facility. (Ex. 1.; T. Capowski, Appellant.)

12. At no time during his stay at the Facility, did the Appellant [REDACTED] or [REDACTED] to [REDACTED] another resident or staff member. He also never [REDACTED] or [REDACTED] to [REDACTED] himself. (Ex. 1., Ex A.; T. Capowski.)

13. The Appellant has remained at the Facility 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)).

The Facility alleged that the Resident's discharge is permissible pursuant to 10 NYCRR § 415(h)(1)(i)(a)(1), which states:

The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation by the facility.

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

The Appellant was admitted to the Facility in [REDACTED] 2017, with diagnoses including [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
The Appellant was admitted to the Facility after time spent in a hospital for a [REDACTED] [REDACTED] [REDACTED], which caused his [REDACTED] [REDACTED]. Shortly after the Appellant was admitted to the Facility, he became [REDACTED] and [REDACTED] to the medical staff attending to his care. He was [REDACTED] on several occasions and made both [REDACTED] and [REDACTED] to the those attempting to help him. The Facility made several attempts to reduce or eliminate the Appellant's [REDACTED] by transferring him from one unit to another. Nothing seemed to work, however and the Appellant's [REDACTED] continued.

The record is rife with examples of the Appellant's [REDACTED] and even [REDACTED] [REDACTED] towards the staff at the Facility. His actions, however, did not rise to the level of a dischargeable offense. The Facility's claim that the Appellant's "needs cannot be met" is simply not supported by the evidence in this matter. While it is clear that the Appellant was consistently [REDACTED], he was never a [REDACTED] to either himself or others. There is no question that the Appellant is a challenging and difficult resident for the staff at the Facility. The Appellant's aggressive [REDACTED] [REDACTED], however, does not obviate the Facility's responsibility to care for him and does not allow a discharge or transfer according to the enumerated requirements of 10 NYCRR § 415.3(h)(1)(a).


Accordingly, the Facility has not proven that its determination to discharge the Appellant involuntarily is appropriate. If the Appellant wishes to relocate to another Facility, it is recommended that the Facility and the Appellant continue to work together to find such a solution. If not, however, the Facility is required to continue to provide care for the Appellant.

DECISION

The Facility has not established that its determination to discharge the Appellant was correct, and that transfer to [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] is appropriate.

1. The Facility has failed to establish that its discharge was necessary.
2. The Facility is not authorized to discharge the Appellant in accordance with the discharge plan.
3. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules.

DATED: Albany, New York
February 24, 2020


MATTHEW C. HALL
Administrative Law Judge

To: Mr. [REDACTED]
c/o Paramount at Somers Rehabilitation
and Nursing Center
189 Route 100
Somers, New York 10589

Kira Capowski, Director of Nursing
Paramount at Somers Rehabilitation
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