



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

May 13, 2020

## CERTIFIED MAIL/RETURN RECEIPT

Ally Rand, DSW  
Suffolk Center for Rehab & Nursing  
25 Schoenfeld Boulevard  
Patchogue, New York 11772

[REDACTED]  
c/o Suffolk Center for Rehab & Nursing  
25 Schoenfeld Boulevard  
Patchogue, New York 11772

Jenny Neary, Esq.  
Coward Dizzia LLP  
45 Rockefeller Plaza  
Suite 2000  
New York, New York 10111

**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

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan  
SAPA File  
BOA by scan

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

Suffolk Center for Rehabilitation  
& Nursing

Respondent,

to discharge him from a residential health  
care facility.

ORIGINAL

DECISION

A Notice of Transfer/Discharge dated [REDACTED] [REDACTED] 2020 was issued to [REDACTED] [REDACTED] (Appellant) by Suffolk Center for Rehabilitation & Nursing (Facility). The Appellant appealed the proposed discharge. 10 NYCRR 415.3(i)(2). On May 7 and 8, 2020, a hearing was held by videoconference before Dawn MacKillop-Soller, Administrative Law Judge. Evidence was received (Appellant's 1 and Facility's A-I). Recordings of the hearing were made.

The Appellant was present at the hearing and represented himself. The Facility was represented by Jenny Neary, Esq. Alexandra Rand, Director of Social Work, Melissa Springer, Director of Rehabilitation, [REDACTED] [REDACTED] physical therapist and [REDACTED] [REDACTED] occupational therapy assistant, testified on behalf of the Facility. The Appellant testified on his own behalf.

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 from [REDACTED] [REDACTED] to the Facility on [REDACTED] [REDACTED] 2019 for short term restorative rehabilitation services due to pain to his [REDACTED] [REDACTED]. His prior medical history includes [REDACTED], [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED], [REDACTED] [REDACTED] [Exhibit C.]

2. On [REDACTED] [REDACTED] 2020, the Appellant was discharged from occupational and physical therapies. He is medically cleared for weight bearing and ambulates flat surfaces independently. He can climb some steps but uses a "[REDACTED]" method to navigate a flight of stairs. Although he chooses to use a wheelchair, he is capable of ambulating freely inside and outside the facility. [Exhibits C, D, G, I.]

3. The Appellant does not have any cognitive limitations and can manage his own medications, which include [REDACTED] for pain, [REDACTED] for [REDACTED], [REDACTED] for [REDACTED] and [REDACTED] for [REDACTED] [Exhibit I].

4. The Appellant has met his treatment goals and is independent with his activities of daily living. [Exhibits C-E, I.]

5. The Facility's proposed discharge plan is to transfer the Appellant to a friend's home, located in [REDACTED] New York. The Appellant had previously lived at that address for two years. [Exhibit G; Recording 2/1:09-1:27.]

6. The Appellant does not require skilled nursing care. He objects to the discharge and to the discharge plan on the grounds that he requires physical therapy due to his inability to walk.

7. The Appellant's care team at the Facility and the Facility's physician, Benjamin Farmer, M.D., have determined that the Appellant is not in need of nursing home care and that the Facility'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 and is documented in the Appellant's clinical record. [Exhibit I.]

#### Applicable Law

1. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(i), which 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 him to a friend's home in [REDACTED] New York, is appropriate. The Appellant has reached his restorative therapy goals and no longer requires skilled nursing care. [Recording 28:27; 28:54-29:15.]

The Appellant claims he continues to need nursing home care for physical therapy because he is unable to walk. However, the Facility's rehabilitation team credibly testified, and his clinical record documents, that the Appellant has been observed independently walking inside and outside the Facility and successfully managing his activities of daily living. The care team concurs that the Appellant requires no oversight with preparing and completing meals, toileting, bathing, ambulating and managing his medications.

[Exhibits C-D, G, I; Recording @ 21:01-24:22; 25:17-24:50; 26:29; 27:19; 31:22.]

██████████ occupational therapy assistant, testified to her personal observations of the Appellant completing such tasks without difficulty or assistance. ██████████ physical therapist, and Melissa Springer, Director of Rehabilitation, testified to making these same observations and of the Appellant sitting on steps and successfully using his ██████████ to perform "██████████" to ascend and descend a flight of stairs. These witnesses also confirmed he requires no assistive devices for ambulation and that his insistence on using a wheelchair is purely voluntary. [Recording @ 21:01-24:22; 23:24-24:22; 26:29-27:19; 52:17; 55:10-58:12; 58:10-59:39; 59:58; 2/3:17.]

The Appellant presented no evidence to support his claim that he requires physical therapy services to complete some tasks. The record he submitted from a ██████████ of 2020 evaluation by an ██████████ ██████████, ██████████ ██████████, MD, recommends only temporary physical therapy for "██████████" his ██████████ "two to three times per week." This recommendation hardly justifies around the clock skilled nursing care, especially when the evidence established the availability of such services on an outpatient basis. Dr. ██████████ further recommendation that the Appellant "weight-bear as tolerated," is also inconsistent with the Appellant's claim that he is wheelchair bound. [Exhibit 1; Recording 1:00:16-1:02:30.]



The Appellant raised concerns about managing stairs at his friend's home, a location where he previously lived for two years. It is undisputed, however, that the Facility's restorative therapists taught him a safe method for navigating stairs, which they witnessed him complete. The discharge plan also includes home health care services to acclimate the Appellant and for maintaining his functional status. [Exhibits D-G; Recording 1:00:16; 2/38:05-58:01; 2/1:35-1:47:7.]

The Appellant's dislike of these options does not establish a need for skilled nursing services in a nursing home. His complaint of [REDACTED] pain impairing his ability to walk is unsubstantiated by the Facility's medical evidence and fails to justify such care. Nursing homes in New York State are critically needed, especially in the wake of COVID-19, to provide nursing care to sick, invalid, infirm, disabled or convalescent persons. Nursing homes must be made available for those who require on-site, high level and continuous care. PHL § 2801; 10 NYCRR 415.2(k).

The Facility's determination to discharge the Appellant is 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. Also, I find transfer to the residence in [REDACTED] New York, where he has lived in the past, appropriate. This familiar placement will enable the Appellant to improve his [REDACTED] strength outside of a nursing home setting





and further his goals of returning to his beloved [REDACTED] activities, such as [REDACTED] and volunteering for [REDACTED] [REDACTED]. The Facility is authorized to transfer the Appellant in accordance with its discharge plan, which includes a referral for home health care services.

Order

1. The Facility is authorized to discharge the Appellant to the location identified in the notice of discharge and in accordance with its discharge plan, which includes a referral for home health care services.

Dated: Albany, New York  
May 11, 2020

  
Dawn MacKillop-Soller  
Administrative Law Judge

To:   
Suffolk Center for Rehabilitation & Nursing  
25 Schoenfeld Boulevard  
Patchogue, New York 11772

Ms. Jenny Neary, Esq.  
Coward Dizzia LLP  
45 Rockefeller Plaza  
Suite 2000  
New York, NY 10111

Ms. Alexandra Rand, Director of Social Work  
Suffolk Center for Rehabilitation & Nursing  
25 Schoenfeld Boulevard  
Patchogue, New York 11772