

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



Department of Health

ANDREW M. CUOMO
Governor

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

LISA J. PINO, M.A., J.D.
Executive Deputy Commissioner

August 5, 2020

CERTIFIED MAIL/RETURN RECEIPT

Carmelita Lowery, SW
Buffalo Center for Rehabilitation
and Nursing
1014 Delaware Avenue
Buffalo, New York 14221

██████████
c/o Buffalo Center for Rehabilitation
and Nursing
1014 Delaware Avenue
Buffalo, New York 14221

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
BUFFALO CENTER FOR REHABILITATION
AND NURSING

Respondent,

to discharge him from a residential health
care facility.

COPY

DECISION

Hearing Before:

Sean D. O'Brien
Administrative Law Judge

Held via WEB EX

Hearing Date:

July 31, 2020

Parties:

Buffalo Center for Rehab & Nursing
By: Carmelita Lowery,
Director of Social Worker

[REDACTED]

Pro Se

JURISDICTION

By notice dated [REDACTED] [REDACTED] 2020, Buffalo Center for Rehabilitation and Nursing (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [REDACTED] (the Appellant) from the Facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) Section 415.3(i).

HEARING RECORD

Facility Exhibits: 1-6

Facility Witnesses:

Carmelita Lowery, Director of Social Work
[REDACTED] Resident Social Worker
Karen Wagner, Director of Therapy
[REDACTED] Finance Coordinator
[REDACTED] Diet Technician
[REDACTED] LPN, Resident Unit Manager

Appellant's Witness: [REDACTED]

Administrative Law Judge Exhibit 1: Notice of Hearing with Discharge Notice

A digital recording of the hearing was made part of the hearing record via WEB EX.

ISSUE

Has the Facility established that the determination to transfer/discharge is correct and the discharge plan for the Appellant is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (T.) of witnesses and exhibits (Exhibit) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant is a [REDACTED] year-old male who was admitted to the Facility on [REDACTED] [REDACTED] 2020, for a short-term rehabilitation with a diagnosis of [REDACTED] [REDACTED] [REDACTED] [REDACTED]) and [REDACTED]. (Exhibit 1; T. [REDACTED] 40:39, T. [REDACTED] 36:39).

2. By notice dated [REDACTED], 2020, the Facility determined to discharge the Appellant on [REDACTED] [REDACTED] 2020, because his "...health has improved sufficiently..." so that he no longer needs the services of a skilled nursing facility. (Exhibits 5, 6; T. Lowery 9:10, T. [REDACTED] 12:30).

3. The Facility determined to discharge the Appellant back to the community via the [REDACTED] Department of Social Services (DSS). (Exhibits 4, 5, 6; T. Lowery 9:30, T. [REDACTED] 13:52).

4. At the time of his admission to the Facility, the Appellant needed assistance in all of his Activities of Daily Living (ADLs) including ambulating, transferring and bathing. The goal of Appellant's short-term admission was to return the Appellant to the community. (Exhibits 1, 2, 3; T. [REDACTED] 12:15, T. Wagner 20:08, T. [REDACTED] 36:39).

5. The Appellant has completed his short-term rehabilitation to the point where he no longer needs skilled nursing care nor does he need assistance with his ADLs. (Exhibits 2, 3, 4, 6; T. Lowery 9:30, T. [REDACTED] 12:50, T. Wagner 20:38).

6. The Appellant can take his own medications, self-direct and is capable of making his own medical appointments. (Exhibits, 2, 3, 4; T. Lowery 9:20, T. [REDACTED] 14:12, T. [REDACTED] 27:00).

7. The Appellant can ambulate up to [REDACTED] [REDACTED] [REDACTED] feet with a roller walker without supervision. (Exhibits 2, 3; T. Wagner 21:54).

8. The Appellant was referred to DSS for placement into its emergency housing/shelter program where he has lived previously. The Appellant states he is not medically ready to be discharged. (Exhibit 4; T. Lowery 9:45, T. [REDACTED] 40:30, T. [REDACTED] 45:43).

9. It is the professional opinion of the Appellant's caregivers at the Facility, including the Appellant's Attending Physician, the Director of Social Work, Facility Dietitian and the Facility's Director of Therapy, that discharge to the DSS emergency housing/shelter program is appropriate. (Exhibits 2, 3, 4, 5, 6; T. Lowery 9:30, T. [REDACTED] 40:05, T. Wagner 20:17, T. [REDACTED] 27:00).

10. The Appellant remains at the Facility pending the outcome of the 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 Sections 2801(2)(3); 10 NYCRR Section 415.2(k).

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

The Facility alleges the Appellant's discharge is permissible pursuant to 10 NYCRR Section 415(i)(1)(i)(a)(2), which states in relevant part:

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.

Under the hearing procedures at 10 NYCRR Section §415.3(i)(2)(ii), the Facility bears the burden to prove a discharge necessary and the discharge plan is appropriate. Under the New York State Administrative Procedures Act (SAPA) Section 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 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 on [REDACTED], 2020, for short term rehabilitation. His medical conditions include [REDACTED] and [REDACTED]. At the time of his admission to the Facility, the Appellant required assistance with the ADLs of ambulating, transferring and bathing. (Exhibits 1, 2, 3; T. Wagner 20:17).

By [REDACTED] 2020, however, the Appellant had made sufficient improvements in all ADLs areas and had no need for skilled nursing care at the facility. The Facility's Director of Therapy, Ms. Karen Wagner, testified the Appellant has hit all the benchmarks for his physical and occupational therapy. Ms. Wagner further testified the Appellant can ambulate up to [REDACTED] feet with a roller walker without supervision. (Exhibits 2, 3; T. Wagner 21:54).

Ms. [REDACTED] [REDACTED] the resident's social worker at the Facility testified the Appellant is being discharged back to the community and to the DSS emergency housing/shelter program where the Appellant has lived previously. (Exhibits 1, 5; T. [REDACTED] 13:52).

The Facility attempted to work with the Appellant to assist the Appellant post discharge and several Assisted Living Facilities (ALFs) were contacted, but the Appellant was not accepted at the ALFs due to the Appellant's past [REDACTED] [REDACTED]. (Exhibit 4, T. [REDACTED] 13:00, 15:30).

Importantly, the Appellant's attending physician at the Facility stated the Appellant, "...is medically stable now he [Appellant] could be discharge[d] to DSS housing unit for placement and/or shelter." (Exhibit 6). The Appellant testified on his own behalf and made it known he does want to be discharged because he feels that he is not ready, but the Appellant did not provide any medical proof to support his position. Therefore, the Facility has met its burden of establishing valid grounds for discharge. 10 NYCRR Section 415.3(i)(1)(i)(b).

The discharge plan to the community and to the DSS emergency housing/shelter program is appropriate. The discharge plan addresses the medical needs, dietary and personal care needs of the Appellant post discharge. (Exhibit 4, T. Lowery 9:45, T. [REDACTED] 13:52, T. [REDACTED] 33:33). 10 NYCRR Section 415.3(i)(1)(vi).

The Appellant will be discharged to DSS where a social worker will be assigned to the Appellant to assist him regarding housing, meals, and food stamps. The Facility will issue to the Appellant a roller walker, as durable medical equipment. In addition, the Appellant's scripts and necessary medical referrals will be made to a local pharmacy and community health center. (Exhibit 4; T. [REDACTED] 14:12, T. Wagner 22:00).

As part of the Facility's discharge plan development, social worker staff attempted to contact Appellant's [REDACTED] as a discharge resource, but the Appellant's [REDACTED] never returned the social workers' phone calls. Also, an attempt was made by Facility social workers to work with the Appellant's [REDACTED] as a discharge resource. Unfortunately, the Appellant's [REDACTED] is homeless and is not a viable resource. Finally, the Appellant

cannot be discharged to a private apartment because he lacks sufficient income, nor can the Appellant be placed at ALFs due to his history of [REDACTED]. (Exhibit 4; T. [REDACTED] 40:30, T. [REDACTED] 35:43).

Taken together, the Facility has adequately planned for the Appellant's discharge. The Facility's actions sufficiently address the medical needs of the Appellant post discharge. 10
NYCRR Section 415.3(i)(1)(vi).

CONCLUSION

The Buffalo Center for Rehabilitation and Nursing Center has proven that its determination to discharge the Appellant was correct and the discharge plan is appropriate.


DECISION

The appeal by Appellant is therefore DENIED.

The Facility is authorized to discharge Appellant in accordance with the [REDACTED], 2020, Discharge Notice.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

DATED: Albany, New York
August 5, 2020


Sean D. O'Brien
Administrative Law Judge

To: Mr. [REDACTED]
c/o Buffalo Center for Rehabilitation and Nursing
1014 Delaware Avenue
Buffalo, New York 14209

Ms. Carmelita Lowery,
Director of Social Work
Buffalo Center for Rehabilitation and Nursing
1014 Delaware Avenue
Buffalo, New York 14209