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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

October 29, 2020

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Terence Cardinal Cooke HCC
1249 Fifth Avenue
New York, New York 10029

Vickey Johnson, Director of Pt Accounts
Terence Cardinal Cooke HCC
1249 Fifth Avenue
New York, New York 10029

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**

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

██████████

Appellant,

from a determination by

Terence Cardinal Cooke Health Care Center

Respondent,

to discharge him from a residential health care facility.

COPY

DECISION

Before: Rayanne L. Babich
Administrative Law Judge (ALJ)

Date: September 16, 2020

Held at: Webex videoconference

Parties: ██████████, Appellant
c/o Terence Cardinal Cooke Health Care Center
1249 Fifth Avenue
New York, New York 10029

Vickey Johnson, Director of Patient Accounts
Terence Cardinal Cooke Health Care Center
1249 Fifth Avenue
New York, New York 10029

JURISDICTION

A Notice of Transfer/Discharge dated ██████████, 2020 was issued to ██████████ (Appellant) by Terence Cardinal Cooke Health Care Center (Facility). The Appellant appealed the proposed discharge. 10 NYCRR 415.3(i)(2). The hearing was held by videoconference and was digitally recorded. The record closed on September 25, 2020.

RECORD

ALJ Exhibits: I – Letter with Notice of Hearing
II – Notice of Discharge dated [REDACTED], 2020

Facility Exhibits: 1 – Medical progress notes from Dr. Alicia Williams
2 – [REDACTED] Hospital [REDACTED] Clinic with email for referral instructions
3 – [REDACTED] Homeless Services program goals

Appellant Exhibits: None

Facility Witnesses: Linda Annor, Director of Nursing
Herbert Daughtry, Social Worker
Trenia Powis, Social Worker

Appellant Witnesses: [REDACTED]

FINDINGS OF FACT

1. Terence Cardinal Cooke Health Care Center is a residential health care facility. [Ex I.]
2. The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED] 2019 for [REDACTED]
[REDACTED]. His medical diagnoses include [REDACTED] and
[REDACTED] maintenance for history of [REDACTED]. Prior to his admission to the
Facility, the Appellant was hospitalized following a stay in another nursing home. [Ex 1;
R@43:30.]
3. The Appellant was treated for [REDACTED] and received speech therapy due to changes in
[REDACTED]. [R@16:06.]
4. The Appellant's infection resolved and on [REDACTED] 2020, he met his speech therapy
treatment goals. [R@16:23.] He is independent in his activities of daily living and can
manage his medications, which include [REDACTED] and [REDACTED] [Ex 1; R@16:29,
49:58.]

5. The Facility's proposed discharge plan is to transfer the Appellant to [REDACTED] Shelter, a homeless shelter located at [REDACTED] [REDACTED], in [REDACTED] and is known to the Appellant. [Ex II; R@36:58.]
6. The Appellant does not require skilled nursing care. He objects to the discharge and to the discharge plan on the grounds that he does not desire to reside in a shelter. [R@51:23.]
7. Alicia Williams, M.D., the Appellant's treating physician at the Facility, has evaluated the Appellant during throughout his admission and determined that he is medically stable for discharge to the shelter and does not require nursing home care. [Ex 1.]

ISSUE

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?

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:

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 has proven 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 the ██████████ ██████████ Shelter, a homeless shelter, is appropriate. Linda Annor, the Director of Nursing at the Facility, testified that the Appellant's ██████████ infection has resolved and speech therapy goals have been met. [R@16:06.] Ms. Annor confirmed that the Appellant is independent with his activities of daily living and no longer requires skilled care. [R@13:49.] Alicia Williams, M.D. documented that the Appellant is medically stable for discharge to the shelter. [Ex 1.] The Appellant testified that he requires no assistance from Facility staff with attending to his daily care needs and can manage his medications in the community. [R@12:55; 49:58.] He agreed that he is ready for discharge but opposed the Facility's discharge plan to transfer him to the shelter. [R@36:58; 49:58.]

The Appellant objected to the discharge plan because he fears his medications and belongings will be stolen at the shelter. [R@36:58, 51:23.] While the Appellant's concerns are understandable, they fail to justify skilled nursing care. Nursing homes in New York State are critically needed 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).

Herbert Daughtry and Trena Powis, social workers at the Facility, detailed the many efforts made by the Facility to find alternative placements for the Appellant, such as referrals to [REDACTED], a program that assists with finding affordable housing. [R@19:25.] However, the Appellant has persistently refused to cooperate with the referral process and declined assistance with obtaining Social Security income. [R@22:29, 30:53.]

The Appellant refused placement at the shelter but has not identified any other placement option. [R@54:13.] The Appellant argued that his lack of government issued identification will prevent him from accessing services from a [REDACTED] clinic. [R@1:01:10.] However, Mr. Daughtry confirmed that the Appellant will be able to receive this medication. [Ex 2, 3; T. 1:03:11.]

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. The transfer to the [REDACTED] Shelter, where he has resided in the past, is appropriate. This familiar placement will enable the Appellant to access resources for housing and income. [Ex 2, 3; R@33:07; 56:01.]

ORDER

The Facility is authorized to discharge the Appellant to the location identified in the Notice of Discharge and in accordance with its discharge plan.

Dated: October 26, 2020
Albany, New York


Rayanne L. Babich
Administrative Law Judge

TO: [REDACTED], Appellant
c/o Terence Cardinal Cooke Health Care Center
1249 Fifth Avenue
New York, New York 10029

Vickey Johnson, Director of Patient Accounts
Terence Cardinal Cooke Health Care Center
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