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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 8, 2020

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Quantum Rehabilitation & Nursing
63 Oakcrest Avenue
Middle Island, New York 11953

Paul Mullman, DSW
Quantum Rehabilitation & Nursing
63 Oakcrest Avenue
Middle Island, New York 11953

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

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

COPY

DECISION


Appellant,

from a determination by


QUANTUM REHABILITATION
AND NURSING

to discharge him from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Dates: September 28, 2020
October 5, 2020

Parties: 
Quantum Rehabilitation and Nursing
63 Oakcrest Avenue
Middle Island, New York 11953
By: Pro Se

Quantum Rehabilitation and Nursing
By: Paul Mullman, Director of Social Work
Quantum Rehabilitation and Nursing
63 Oakcrest Avenue
Middle Island, New York 11953

JURISDICTION

By notice dated [REDACTED], 2020, Quantum Rehabilitation and Nursing (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] [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(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. A stenographic reporter prepared a transcript of the proceeding.

HEARING RECORD

ALJ Exhibits: I – Letter with Notice of Hearing and Transfer/Discharge Notice
II – Letter with Additional Hearing Date

Facility Exhibits: 1 – [REDACTED] 20 Summary Letter
2 – PT Evaluation & Plan of Treatment
3 – PT Treatment Encounter Notes
4 – PT Discharge Summary
5 – OT Evaluation & Plan of Treatment
6 – OT Treatment Encounter Notes
7 – OT Discharge Summary
8 – [REDACTED] /20 Medical Status Letter

Appellant Exhibits: None

Facility Witnesses: Paul Mullman, Director of Social Work
[REDACTED] Social Worker
Lauren Pashkin, Director of Rehabilitation

Appellant Witnesses: Appellant testified on his own behalf

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2020 for rehabilitation following a hospital stay for injuries and pain. (Testimony [T.] Mullman.)
2. The Appellant has received physical therapy (PT) and occupational therapy (OT) services from the Facility. He was discharged from both therapies on [REDACTED] 2020. (Facility Exs. 4, 7.)
3. The Appellants participation in therapy was been sporadic and marked by self-limiting behaviors. (Facility Exs. 3, 4, 6, 7; T. Pashkin.)
4. At the time of discharge from PT, the Appellant was noted to function independently with bed mobility and transfers, and to function with modified independence on level surfaces and stairs. (Facility Ex. 4; T. Pashkin.)
5. At the time of discharge from OT, the Appellant was noted to be independent with all activities of daily living (ADLs.) (Facility Ex. 7, T. Pashkin.)
6. The Appellant's physician at the Facility medically cleared the Appellant to return to the community and opined that the Appellant does not have skilled needs that require services in a nursing home. (Facility Ex. 8.)
7. On August 7, 2020, the Facility issued a Notice of Transfer/Discharge to the Appellant that proposed discharge to the private home of a friend in [REDACTED] New York, where the Appellant has previously resided. (ALJ Ex. I; Facility Ex. 1; T. [REDACTED])
8. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant's health has improved sufficiently, and the Appellant no longer requires the services of the facility. (ALJ Ex. I.)
9. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.

10. The Appellant has remained at the Facility during the pendency of the appeal.

ISSUES

Has the Facility established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

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. (PHL § 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[i][1].)

The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415(i)(1)(i)(a)(2), which states:

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 415.3(i)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate. Under 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 conclusion or fact. It is less than a preponderance of evidence but more than mere surmise, conjecture or speculation, and it constitutes a rational basis for a decision. (Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3d Dept. 1984], appeal dismissed 63 N.Y.2d 649.)

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] 2020 for rehabilitation and has received PT and OT from the Facility during his stay. Lauren Pashkin, Director of Rehabilitation, testified regarding the Appellant's PT and OT levels. Ms. Pashkin's testimony was based on her knowledge as the supervisor of the therapists that worked with the Appellant since [REDACTED] 2020 and her review of therapy records. Ms. Pashkin testified that the Appellant has repeatedly engaged in self-limiting behavior and has resisted participating in therapy. She further testified that the Appellant has been observed to demonstrate the movement, strength and coordination necessary to navigate stairs, although navigation may be in an [REDACTED] manner with compensatory strategies, such as [REDACTED]" where the Appellant would essentially [REDACTED] himself [REDACTED] the [REDACTED] on his [REDACTED] using his [REDACTED]. She testified that the Appellant can ambulate household distances with a rolling walker and that he is completely independent with self-care and all instrumental ADLs.

[REDACTED] [REDACTED] a social worker at the Facility, testified that the discharge location for the Appellant is a private home of a friend that is approximately [REDACTED] minutes away from the Facility. The home reportedly has [REDACTED] stairs that the Appellant would need to navigate – [REDACTED] to enter the residence and then [REDACTED] to access the second floor where the Appellant's bedroom and bathroom are located. Ms. Pashkin credibly testified that the Appellant has demonstrated through skilled observation that he can manage the stairs at that location. She testified that the Appellant has the ability to navigate the first [REDACTED] steps into the home with crutches and that he can access the second floor with a combination of crutches and [REDACTED]. Ms. Pashkin also testified that she has no concerns with the Appellant's ability to exit the home quickly in case of emergency as descending is a much quicker process than ascending and does not require as much strength. Ms. [REDACTED] testified that home care services of PT and OT will be set up for the Appellant upon

discharge. She testified that Medicaid will provide an evaluation to determine the need for any home aide services to assist with tasks such as laundry, shopping, and food services, as well as an evaluation for possible home modifications. Ms. [REDACTED] also testified that Medicaid will provide necessary medical transport, and Ms. Pashkin testified that the Appellant will be discharged with necessary equipment including a wheelchair, walker, crutches, and 3-in-1 commode.

Igor Gutnik, M.D., the Appellant's medical doctor at the Facility, has determined that the Appellant is medically clear for discharge. Dr. Gutnik noted in a letter that the Appellant has completed his rehabilitation program and that the Appellant's medical issues are chronic in nature and can be treated by a primary care physician in the community. (Facility Ex. 8.)

The Appellant argues that he should not be discharged to his friend's home in [REDACTED] New York. The crux of the Appellant's argument is that he cannot manage entering and exiting the home because of the stairs and that he will be unable to manage some household tasks such as shopping, laundry (located in the basement), or handling anything heavy above his head such as putting food in and out of the microwave. The Appellant maintains that he cooperatively engaged in therapy and that he requires stair training that was not sufficiently provided to him by the Facility. The Appellant also expressed concern about being able to participate in social activities should he desire to go out late at night for entertainment purposes.

The Appellant described himself as being "stuck" in a wheelchair from inability to put weight on his legs but has having strong arms and routinely going to the gym. The Appellant reported a long history of injuries (dating back to an [REDACTED] in 1988) and multiple surgeries, with the most recent being approximately two years ago. The Appellant also reported that he regularly (approximately every two months) treats with a general practitioner in the community, "quite often" sees an [REDACTED] physician in the community and can go back to a past pain management

physician if needed. The Facility, upon recently becoming aware of a possible [REDACTED] in the Appellant a year or two ago, has arranged for [REDACTED] testing to be done within the next week or so and will refer the Appellant to a [REDACTED] in the community for treatment if necessary. (T. [REDACTED] [REDACTED])

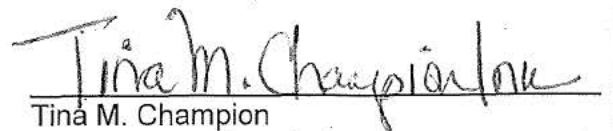
The evidence supports that the Appellant's health has improved sufficiently such that he no longer needs the services of a skilled nursing facility. The Appellant has completed his rehabilitation program at the Facility and his medical needs can be met in the community. The evidence also supports that the Facility's plan to discharge the Appellant to a private home in the community is appropriate. The Appellant can enter and exit the home, will be discharged with necessary equipment, will receive PT and OT at home, and will be evaluated for any necessary aide services.

DECISION

Quantum Rehabilitation and Nursing has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Quantum Rehabilitation and Nursing is authorized to discharge the Appellant in accordance with its discharge plan on or after [REDACTED] 2020.
2. 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: Menands, New York
October 8, 2020


Tina M. Champion
Administrative Law Judge

TO:

██████████ ██████████
Quantum Rehabilitation and Nursing
63 Oakcrest Avenue
Middle Island, New York 11953

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