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Department of Health

ANDREW M. CUOMO
Governor

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

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

January 13, 2021

CERTIFIED MAIL/RETURN RECEIPT

Andria Adigwe, Esq.
c/o New York Congregational Nursing Center
135 Linden Blvd.
Brooklyn, New York 11226

[REDACTED]
c/o New York Congregational
Nursing Center
135 Linden Blvd.
Brooklyn, New York 11226



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

-----X
 In the Matter of an Appeal, pursuant to :
 10 NYCRR § 415.3, by :
 :
 [REDACTED] :
 :
 Appellant, :
 :
 from a determination by :
 :
 NY CONGREGATIONAL :
 NURSING CENTER :
 :
 Respondent, :
 :
 to discharge him from a residential health :
 care facility. :
 -----X

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DECISION

Hearing Before: Matthew C. Hall
 Administrative Law Judge

Held at: NY Congregational Nursing Center
 135 Linden Blvd.
 Brooklyn, New York 11226

Hearing Date: December 1, 2020

Parties: NY Congregational Nursing Center
 By: Andria Adigwe Esq.

By: [REDACTED] - [REDACTED]

JURISDICTION

By notice dated [REDACTED], 2020, New York Congregational 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 attached Facility Discharge Notice

Facility Exhibits: 1 - Progress Notes
2 - Facility Communications [REDACTED]-20)
3 - OT/PT Progress Reports

Facility Witnesses: Dr. Roger Boyce - Attending Physician
Esther Wright - Director of Social Work
Brian Popovsky - Director of Rehabilitation

Appellant's Witness: Appellant testified on her own behalf
[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 Appellant is a [REDACTED]-year-old woman who was admitted to the Facility on [REDACTED], 2020. (ALJ I, Ex 1.)

2. She was admitted with diagnoses of a [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]. (Ex 1.)

3. By notice dated [REDACTED], 2020, the Facility determined to discharge the Appellant on [REDACTED], 2020 because her "health improve(d) sufficiently so that the Resident no longer needs the services of the Facility." (Ex. 1.)

4. The Facility determined to discharge the Appellant to her home, located at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (ALJ I, Ex 1.)

5. The Appellant was admitted to the Facility from [REDACTED] [REDACTED] Hospital. Her stated goal at the time of admission was "to be able to stand, walk, and go home." (Ex. 1.)

6. During her stay at the Facility, the Appellant has participated in physical and occupational therapy. (See Ex. 3.)

7. At the time of the hearing, the Appellant had made significant improvement in her activities of daily living (ADLs). She is able to ambulate [REDACTED] feet with minimal assistance of one person and a rolling walker. She is able to complete [REDACTED] steps on the stairs with maximum assistance while using the left handrail. (Ex. 1.)

8. The Appellant's Physical and Occupational Therapists have determined that she no longer requires their skilled services and referred her to the Restorative Nursing Program to continue making improvements. (Ex. 1.)

9. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending Physician, Director of Social Work, and Director of Rehabilitation, that discharge to her home is appropriate, specifically with the help of the Restorative Nursing Program. (Ex. 1, 2; T. Boyce, Popovsky, Wright.)

10. The Appellant remains 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]).

The Facility alleged that the Resident's discharge is permissible pursuant to 10 NYCRR § 415(h)(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 Title 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 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

Reason for Discharge

Regarding whether the resident's health improved sufficiently and the resident no longer require(s) the services of a skilled nursing facility:

The Appellant was admitted to the Facility on [REDACTED] 2020, after treatment at [REDACTED] Hospital. Upon admission to the Facility, the appellant was diagnosed with a [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Ex 1.) Her stated goal when she was admitted was to be able to "stand, walk, and go home." (Ex. 1.)

During her time at the Facility, the Appellant has made significant strides with her overall health. She regained the ability to ambulate up to [REDACTED] steps with minimal assistance

including a rolling walker. She can walk up stairs but requires maximum assistance in doing so.

It should be noted that the Appellant's [REDACTED], and she is, indeed, [REDACTED]. This condition existed, however, prior to her time at the Facility and the Appellant lived with this condition in her home prior to her hospitalization. (T. Boyce, Wright, Popovsky.) While the medical professionals at the Facility feel that the Appellant "no longer qualifies for skilled therapy services," that does not mean that the Appellant no longer needs continued interventions in order to allow her to continue with the progress she made at the Facility. Therefore, the Appellant was placed on Restorative Nursing Program, specifically to allow her to improve her strength, endurance, and balance while at her own home. (Ex. 2.)

Accordingly, the Facility has proven that its determination to discharge the Appellant is correct.

Discharge Location

As discussed above, the Appellant has her own apartment where she lived prior to her hospitalization. Returning to her home will be a challenge in that she needs assistance ascending a staircase, and even some assistance walking without a walker.

Discharging the Appellant to her home without assistance would not be acceptable. However, the Facility has placed her on Restorative Nursing Program, specifically to allow her to improve her strength, endurance, and balance. (Ex. 2.) As the Appellant no longer qualifies for the full skilled nursing provided by the Facility, discharge to her home with the assistance of the Restorative Nursing Program is an appropriate option.

Accordingly, the Facility has proven that its determination to discharge the Appellant to her home with the assistance of the Restorative Nursing Program is appropriate.

DECISION

The Facility has established that its determination to discharge the Appellant was correct, and that transfer to her home is appropriate.

1. The Facility is authorized to discharge the Appellant in accordance with its discharge plan on or after [REDACTED] 2021.
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: Albany, New York
January 12, 2021



MATTHEW C. HALL
Administrative Law Judge

To: Andria Adigwe Esq.
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Brooklyn, New York 11226

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