



Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Acting Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

December 27, 2021

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o The New Jewish Home – Manhattan
120 West 106th Street
New York, New York 10025

Margaret Bondy, DSW
The New Jewish Home – Manhattan
120 West 106th Street
New York, New York 10025

Ken Majerus
Chief of Administration
City of New York Law Department
100 Church Street
New York, New York 10007

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,

Dawn MacKillop-Soller
Acting Chief Administrative Law Judge
Bureau of Adjudication

DXM: 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

██████████ ██████████

Appellant,

from a determination by

THE NEW JEWISH HOME,
MANHATTAN

Respondent,

to discharge him from a residential health
care facility.

ORIGINAL

DECISION

Hearing Before:

Matthew C. Hall
Administrative Law Judge

Held at:

Via WebEx

Hearing Date:

October 13, 2021

Parties:

The New Jewish Home
By: Margaret Bondy

██████████ ██████████

By: Ken Majerus

JURISDICTION

By notice dated [REDACTED] 2021, The New Jewish Home/Manhattan Division (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, 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(h).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and attached Facility Discharge Notice

Facility Exhibits: 1 - Letter from Dr. Zewdu [REDACTED]/21)
2 - Facility Discharge Notice
3 - Email from Glenn Stewart
4 - CRU Summary Report
5 - Face Sheet

Facility Witnesses: Margaret Bondy - Director of Social Work
Glenn Stewart - Director of Managed Care

Appellant's Witness: Ken Majerus - Advocate for Appellant
Appellant testified on his own behalf

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 man who was admitted to the Facility on [REDACTED] 2020. (Ex 4.)

2. He was admitted originally for sub-acute rehabilitation due to [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED] [REDACTED] (Ex. 5.) He was diagnosed with [REDACTED] following a [REDACTED] [REDACTED] [REDACTED], and [REDACTED]. The Appellant is alert and oriented with a BIMS score of [REDACTED]/15. (Ex 4.)

3. By notice dated [REDACTED] [REDACTED] 2021, the Facility determined to discharge the Appellant on [REDACTED] [REDACTED] 2021 because his "health

improve(d) sufficiently so that the Resident no longer needs the services of the Facility." (Ex. 2.)

4. The Facility determined to discharge the Appellant to the [REDACTED] Men's Shelter, located at [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Ex. 2.)

5. At the time of his admission, the Appellant required assistance with dressing, bathing, and transfers. He was deconditioned and had difficulty walking. He also had a history of falling. He also needed assistance in all his Activities of Daily Living (ADLs). (Ex. 5; T. Bondy.)

6. As of the date of this hearing, the Appellant was able to ambulate independently with a rolling walker and was completely independent in all areas of self-care such as toileting, bathing, dressing, grooming and hygiene. He manages all his medical and personal needs and is medically stable. (Ex. 5; T. Bondy.)

7. Prior to being admitted to the hospital and then transferred to the Facility, the Appellant lived in a rented apartment. However, at the time of this hearing, the apartment was no longer available and no longer an option for the Appellant. (T. Stewart.)

8. The Facility investigated the possibility of sending the Appellant to an assisted living facility. The Appellant, however, is "██████████" to be admitted to such a facility. (T. Stewart.)

9. The Facility also investigated the possibility of sending the Appellant to a different skilled nursing facility. The Appellant, however, was uncooperative with the Facility's efforts, and would not complete the required paperwork for such a transfer. (T. Stewart.)

10. The Appellant has made no payments to the Facility for his stay since ██████████ 2021. As a result, the Appellant now owes the Facility ██████████. (T. Stewart.)

11. 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 Managed Care, that discharge to the community, including to a homeless shelter, is appropriate. (Ex. 1, 2, 3; T. Bondy, Stewart.)

12. 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

The Appellant was admitted to the Facility on [REDACTED] 2020, after time spent in a hospital due to [REDACTED] [REDACTED] subsequent to [REDACTED] [REDACTED]. He was admitted with diagnoses including [REDACTED] following a [REDACTED] [REDACTED], [REDACTED] [REDACTED].

At the time of his admission to the Facility, the Appellant required the Facility's assistance with ambulating, transferring, showering and all ADL's. By [REDACTED] 2021, however, the Appellant had made significant improvements in all these areas. He was able to walk with the assistance of a rolling walker and he was independent in all his ADLs. He had no further need for rehabilitation. Further, the Appellant had been managing all his medical appointments and other personal matters on his own. (T. Bondy.) The Appellant's attending physician at the Facility provided that "Mr. [REDACTED] successfully completed restorative rehabilitation and is medically stable." (Ex. 5.) The Appellant testified on his own behalf and made it known that he did not want to leave the Facility but was unable to provide convincing evidence

that he still required the assistance of a skilled nursing facility.

Further, while not the basis for this appeal, it should be noted that the Appellant is woefully lagging regarding his payments to the Facility for his care. Since [REDACTED] 2021, the Appellant has failed to pay his monthly bill of roughly \$ [REDACTED] per month. In total at the time of this hearing, the Appellant was in arrears to the Facility in the amount of \$ [REDACTED]. When questioned about this, the Appellant stated that he "had no idea" that his insurance was not still covering his stay at the Facility. However, when asked by the Facility financial staff to apply for insurance to cover long-term needs at the Facility, the Appellant refused to cooperate. (T. Stewart.)

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

As discussed above, prior to his stay in a hospital and his transfer to the Facility, the Appellant previously rented an apartment in the community. That apartment, however, is no longer available to the Appellant. As stated above, the Facility investigated the possibility of sending the Appellant to an assisted living facility. The Appellant, however, is "[REDACTED]"

to be admitted to such a facility. (T. Stewart.) The Facility, with the help of the [REDACTED] program, explored other independent housing options for the Appellant. This included the possibility of a transfer to another skilled nursing facility that would be willing to accept the Appellant, despite his arrears and lack of need for such care. The Appellant, however, was uncooperative with the Facility's efforts, and would not complete the required paperwork for such a transfer.

The Facility intends to discharge the Appellant to a homeless shelter as he refuses to cooperate with the Facility's efforts to find him another skilled nursing facility willing to admit him. The Appellant made it clear during his testimony that he is hesitant to be placed in a homeless shelter and fears he will not be able to care for himself in a shelter. (T. Appellant.) The Appellant's options are limited, however, and the homeless shelter would provide the Appellant with immediate shelter and sustenance. In the meantime, the Facility will continue to try to work with the Appellant to attain a skilled facility that would admit him, in lieu of the shelter. (T. Bondy, Stewart.)

Accordingly, the Facility has proven that its determination to discharge the Appellant to homeless shelter is appropriate.

DECISION

The appeal by Appellant is therefore DENIED.

The New Jewish Home, Manhattan Division is authorized to discharge the Appellant in accordance with the [REDACTED] 2021, 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
December 27, 2021


Matthew C. Hall
Administrative Law Judge

To: Mr. [REDACTED]
c/o The New Jewish Home, Manhattan Division
120 West 106th Street
New York, New York 10025

Ms. Margaret Bondy, Director of Social Work
The New Jewish Home, Manhattan Division
120 West 106th Street
New York, New York 10025

Ken Majerus
Chief of Administration
City of New York Law Department
100 Church Street
New York, New York 10007