



**Department  
of Health**

ANDREW M. CUOMO  
Governor

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

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

April 17, 2017

**CERTIFIED MAIL/RETURN RECEIPT**

Carmen Lopez, SW  
Laconia Nursing Home  
1050 East 230<sup>th</sup> Street  
Bronx, New York 10466

██████████, Resident  
c/o Laconia Nursing Home  
1050 East 230<sup>th</sup> Street  
Bronx, New York 10466

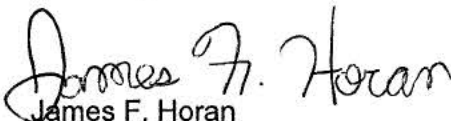
**RE: In the Matter of ██████████ – Discharge Appeal**

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: mw  
Enclosure

COPY

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 : DECISION  
 :  
 LACONIA NURSING HOME :  
 :  
 Respondent, :  
 :  
 to discharge her from a residential health :  
 facility :  
 -----X

The Laconia Nursing Home ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED], 2017, to [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On April 3, 2017, a hearing was held before WILLIAM J. LYNCH, ESQ., ADMINISTRATIVE LAW JUDGE.

The hearing was held in accordance with the Public Health Law of the State of New York; Part 415 in Volume 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"); Part 483 of the United States Code of Federal Regulations ("CFR"); the New York State Administrative Procedure Act ("SAPA"); and 10 NYCRR Part 51.

Evidence was received and witnesses were examined. An audio recording of the proceeding was made. The hearing was held at the Facility located at 1050 East 230<sup>th</sup> Street, Bronx, New York. The

following individuals were present for the hearing: [REDACTED], Resident; Charles Smith, Access Program; Moshe Labi, M.D., Medical Director; Carmen Lopez, Social Worker; Titus Manabat, Rehabilitation Supervisor; Veema Seepersad, R.N. Supervisor.

#### STATEMENT OF THE CASE

The Facility made a determination to discharge the Resident effective [REDACTED] 2017. The stated reason for the discharge was that the Resident's health had improved sufficiently so that she no longer required the services provided by a skilled nursing facility. The proposed discharge location was the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] which is operated by the New [REDACTED] [REDACTED] [REDACTED]). The proposed discharge location was amended to the [REDACTED] Shelter, [REDACTED] [REDACTED], [REDACTED], also operated by [REDACTED]. The Resident filed a timely request for an appeal of the discharge decision and has remained in the Facility pending this determination.

#### STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether the Facility has established a basis which permits the Resident's

discharge from the Facility and whether the proposed discharge plan is appropriate. The Facility has the burden of proving its case by substantial evidence (10 NYCRR § 415.3[h][2][iii], SAPA § 306[1]).

#### FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Citations in parentheses refer to testimony or exhibits. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. The Resident is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED], 2017, for short-term rehabilitation. (Facility Ex. 2, 3; Recording @ 3:45).

2. The Resident completed a course of physical therapy. She is now able to ambulate safely with a [REDACTED] walker, and she is also able to independently perform all activities of daily living. (Facility Ex. 5, 6; Recording @ 8:30, 16:45).

3. The Facility's interdisciplinary care team determined that the Resident no longer required skilled nursing services and could safely be discharged to a shelter. (Facility Ex. 6).

4. The Resident's physician determined that the Resident was medically stable for discharge. (Facility Ex. 4; Recording @ 4:30).

5. On [REDACTED] [REDACTED] 2017, the Facility issued a discharge notice to the Resident. (Facility Ex. 1).

#### ANALYSIS AND CONCLUSIONS

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.

The Facility established through testimony and documents that the Resident no longer needs to reside in a skilled nursing facility, and the Resident offered no evidence to refute this fact. Although the Resident does not want to be discharged to a shelter, she acknowledged that she has no other options available to her. She is not able to stay with a friend or a family member, and she has been unable to find an apartment even though she has had the assistance of a housing advocate available for several months. Based upon the evidence produced at the hearing, I find that the

Resident no longer needs a skilled nursing facility placement, and that she is able to obtain any required follow-up medical care in the community. Therefore, the Facility has established a permissible basis for the Resident's discharge.


**DECISION AND ORDER**

1. The Facility is authorized to discharge the Resident in accordance with its discharge plan on or after [REDACTED], 2017.

2. This decision shall be effective upon service on the parties by facsimile transmission, personal service or by certified or registered mail.

3. 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  
April 14, 2017**

  
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**WILLIAM J. LYNCH**  
**Administrative Law Judge**