



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

May 16, 2017

## CERTIFIED MAIL/RETURN RECEIPT

Frederick P. Deck, Administrator  
The Grand Rehab & Nursing  
at Chittenango  
331 Russell Street  
Chittenango, NY 13037

██████████, Resident  
c/o The Grand Rehab & Nursing  
at Chittenango  
331 Russell Street  
Chittenango, NY 13037

**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

CCNY

In the Matter of  
█ The Grand Rehabilitation & Nursing at  
Chittenango

Administrative Law Judge's Decision

Appeal from a Nursing Home Resident  
Discharge pursuant to Title 10 NYCRR  
§415.3(h)

Before: Administrative Law Judge (ALJ) James F. Horan

For The Grand Rehabilitation and  
Nursing at Chittenango (Facility): Frederick P. Deck, Administrator

For Resident █ (Appellant): *Pro Se*

The Facility moved to discharge the Appellant on the grounds that the Appellant has failed to pay his share for care at the Facility, after reasonable and appropriate notice. The Facility proposed discharge to █, █. The Appellant replied that he opposed discharge to █ because it would remove the Appellant from his medical providers and from his █ treatment center in █ and increase the distance for his friend and power of attorney to travel from █ to visit the Appellant. At the hearing, the Facility offered testimony and documents into evidence and both parties offered argument. The ALJ also conducted a conference call with the parties following the hearing so the power of attorney could participate. After reviewing the record, the ALJ finds that the Facility has established grounds for an involuntary discharge and has proposed a safe and appropriate discharge plan.

## I. Background

Under Title 10 NYCRR § 415.3(h), a nursing home resident holds certain rights concerning to transfer or discharge. Title 10 NYCRR § 415.3(h)(1)(i)(b) allows discharge if a resident has failed to pay, after reasonable and appropriate notice, for his stay at the Facility. In effect, this proceeding acts as a stay on any discharge, until the decision on the discharge appeal. If a decision approves the discharge grounds and discharge plan, the proceeding ends with the decision and the discharge may proceed in accordance with the discharge plan.

The Facility provided a Discharge Notice [ALJ Exhibit 1] to the Appellant on [REDACTED] 2017. As grounds for the discharge, the Discharge Notice stated that the Appellant failed to pay his share for the care the Appellant receives at the Facility. The Appellant then requested the hearing that took place at the Facility in Chittenango, Madison County on March 16, 2017. At the hearing and the conference call that followed, the Appellant spoke on his own behalf. The Facility presented as witnesses: Business Office Manager Lori Stradle and Social Work Director Danielle Magnusson. The ALJ also conducted a conference call with the parties on March 30, 2017. The ALJ received the following documents into the record:

ALJ Exhibit I	Notice of Hearing
Facility Exhibit 1	Invoice,
Facility Exhibit 2	[REDACTED] County Medicaid Decision,
Facility Exhibit 3	Admission Agreement

The record also included digital audio recordings from the hearing and the conference call on compact disc. References to testimony from the audio recordings will indicate the recording on which the testimony occurs (hearing recording [HR] or conference call recording [CC]) and the

time on the recording (*e.g.* "HR @ 12:40" means that the testimony occurs on the hearing recording 12 minutes and 40 seconds into that recording).

Under the hearing procedures at §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under New York State Administrative Procedure Act 306(1) (McKinney Supp. 2017), 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 (3<sup>rd</sup> Dept. 1984), appeal dismissed 63 N.Y.2d 649.

## II. Findings of Fact

The matters in brackets following the findings reflect testimony from hearing recording or exhibits in evidence [Ex] on which the ALJ relied in making the findings. If contradictory information appears elsewhere in the record, the ALJ considered that information and rejected it.

1. The Appellant entered the Facility on [REDACTED] 2016 [HR @ 34:30].
2. At that time, the Appellant signed an Admission Agreement with the Facility in which the Appellant agreed to pay for, or arrange to have payment made for, all services provided under the Admission Agreement [Ex C, page 4, paragraph 3].
3. The Appellant concedes that he has failed to pay for such services [HR @ :50].
4. The Facility concedes that the Appellant continues to require skilled nursing care [HR @ 3:14].

5. The Appellant requires [REDACTED] and receives [REDACTED] services at a Facility in [REDACTED] [REDACTED] [HR @ 15:58].
6. The Facility proposes discharge to [REDACTED], a skilled nursing facility in [REDACTED] [REDACTED], which provides the same services as the Facility, including transporting residents for [REDACTED] [HR @ 13:26].

### III. Conclusions

The ALJ concludes from the Exhibits and the testimony that the Appellant received reasonable and appropriate notice about this discharge, pursuant to Title 10 NYCRR § 415.3(b). The ALJ concludes that the Appellant has failed to pay his share for care at the Facility, so the Facility has grounds to discharge the Appellant. The Facility has also proposed a safe and appropriate discharge plan.

There were few factual issues in dispute in this matter. The Appellant conceded his debt to the Facility and the Facility conceded that the Appellant continues to require services at a skilled nursing facility. The Appellant indicated that the transfer would take him away from his current [REDACTED] provider and treating physicians and that the transfer would move him further from his friend and power of attorney, who visits the Appellant currently twice per week. The ALJ finds these changes regrettable, but these changes fail to make the proposed discharge unsafe or inappropriate.

Under New York Public Health Law Article 28 (McKinney Supp. 2017), facilities which provide skilled nursing care and facilities which provide dialysis both require licensure from the State Department of Health. That licensure requires a finding that the facility operator can

provide services competently. The Facility here proposes discharge to other licensed facilities and the ALJ finds such proposal safe and appropriate. The Appellant mentioned on multiple occasions that the operator at his current [REDACTED] facility is the world's [REDACTED] provider. Although the Appellant may presume that being the largest provider provides a guarantee of better care than other such facilities provide, the ALJ finds the Appellant's presumption purely speculative and unconvincing. The Appellant also raised the concern that there might not be a [REDACTED] chair available for the Appellant in [REDACTED]. The ALJ finds that concern legitimate. The ALJ conditions the approval of this proposed discharge on the Facility guaranteeing an available [REDACTED] chair for the Appellant at the time of transfer. If no [REDACTED] chair is available in [REDACTED] then the proposed discharge location must be willing to provide transportation for the Appellant to whatever [REDACTED] provider can provide services to the Appellant, including the current [REDACTED] provider in [REDACTED] [REDACTED].

ORDER

NOW; after considering the request for Hearing, the testimony and the documents in evidence, the ALJ issues the following Order:

1. The ALJ holds that grounds exist to discharge the Appellant involuntarily.
2. The discharge may proceed pursuant to the proposed discharge plan, including arrangements for the Appellant to receive dialysis as prescribed medically.

Dated: Menands, New York  
May 15, 2017



James F. Horan  
Administrative Law Judge

To: Frederick P. Deck, Administrator  
The Grand Rehabilitation & Nursing at Chittenango  
331 Russell Street  
Chittenango, NY 13037

Resident [REDACTED]  
c/o The Grand Rehabilitation & Nursing at Chittenango  
331 Russell Street  
Chittenango, NY 13037