



# 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 10, 2017

## CERTIFIED MAIL/RETURN RECEIPT

Abigail Little  
The Grand Rome  
801 North James Street  
Rome, New York 13440



**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: 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**  
 :  
 THE GRAND ROME, :  
 :  
 Respondent, :  
 :  
 to discharge him from a residential health :  
 facility :  
 -----X

A Notice of Transfer/Discharge, dated March 23, 2017 was issued to [REDACTED] ("Resident"), by The Grand Rome ("Respondent"). The Resident's [REDACTED] [REDACTED] ("Appellant") made a timely appeal of the Respondent's proposed discharge. On April 13, 2017, a hearing on this appeal commenced before **JUDE BREARTON MULVEY, ESQ., ADMINISTRATIVE LAW JUDGE** at The Grand Rome, 801 North James Street, Rome, New York.

The Hearing was held in accordance with the Public Health Law of the State of New York; Part 415 of 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, witnesses were sworn or affirmed and examined. A digital recording of the proceeding was made. The Resident was not present at the hearing due to his diagnosis of dementia. Present at the hearing were: [REDACTED] [REDACTED] the Resident's [REDACTED] [REDACTED], the Resident's [REDACTED] and the following Facility representatives: Debra Slade, Business Office Manager, and Abigail Little, Social Worker. The following documents were admitted into evidence:

ALJ Exhibit 1: Notice of Hearing

Facility Exhibit A: 19 page document that includes billing information

**STATEMENT OF THE CASE**

Respondent alleges that the Appellant has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) the Resident's care. Respondent determined to discharge the Resident from its facility in Rome, New York to its [REDACTED] facility, the [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] (ALJ Ex. 1; Recording @ 15:09). Pursuant to 10 NYCRR 415.3(h)(1)(v)(d) the Resident remained in Respondent's facility pending the determination of his appeal.

The Appellant and the Resident's family oppose the discharge/transfer plan to the sister facility based upon the

geographic distance from the Appellant's home. The Appellant testified that she does not have the money to pay the outstanding bill and that a Medicaid application is pending.

#### STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the transfer proposed by the Respondent is necessary and the discharge plan is appropriate. The Respondent has the burden of proof and must prove its reasons 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 exhibits or to the recording of the proceeding. These citations represent evidence found persuasive in arriving at a finding.

1. The Respondent, The Grand Rome, is a residential health care facility located in Rome, New York (ALJ Ex. 1).

2. The Resident suffers from [REDACTED], is [REDACTED] and requires assistance for all activities of daily living. He

was admitted to the Respondent's facility on [REDACTED], 2016 for rehabilitative therapy (Ex. A; Recording @ 3:12; 16:05).

3. The Resident was subsequently transferred to a [REDACTED]-term bed at the facility (Ex. A; Recording @ 3:17).

4. The Resident entered Respondent's facility as a private pay patient (Recording @ 11:09).

5. At the time of his admission, the Appellant was working with the County Office of the Aging to apply for Medicaid for the Resident. A Medicaid application was submitted sometime in [REDACTED] 2016 by the Appellant on the Resident's behalf. After the Medicaid application was submitted, the Resident was listed under a "pending Medicaid" status at the facility (Recording @ 3:34-3:47).

6. The Resident's Medicaid application was denied on [REDACTED] 2016 based upon lack of full documentation. The Resident's financial status was thereafter listed as "private pay" (Recording @ 4:06; 11:09).

7. A new Medicaid application was filed on [REDACTED] 2017 (Recording @ 10:38).

8. The Respondent notified the Appellant that approximately \$ [REDACTED] is owed to Respondent for the Resident's care (Recording @ 13:16).

9. On [REDACTED] 2017, the Respondent issued a discharge notice to the Appellant based upon her failure to pay for the Resident's care. The proposed discharge location is [REDACTED], [REDACTED], which is almost [REDACTED] hours driving time from the Appellant's home in [REDACTED] County County, New York (ALJ Ex. 1; Recording @ 11:31; 19:30; 37:12).

#### ANALYSIS AND CONCLUSIONS

Based upon the evidence received at the hearing, I conclude that Respondent has not established a permissible basis for discharging the Resident from Respondent's facility.

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR 415.3(h)[1]). In this instance, the facility alleges that the Resident's discharge is permissible pursuant to 10 NYCRR 415(h)(1)(i)(b), which permits the transfer of a resident when:

[T]he resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third party insurance) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility the facility may charge a resident only allowable charges under Medicaid. Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to

cooperate with the facility in obtaining the funds.

Respondent has the burden of proving that the transfer is necessary and the discharge plan is appropriate (10 NYCRR 415.3[h][2][iii]).

After an initial denial of the Appellant's request for Medicaid benefits for the Resident, the Appellant worked with both an attorney and the County Office of the Aging to resubmit the Medicaid application and necessary paperwork. The Appellant's application for Medicaid on the Resident's behalf was resubmitted on [REDACTED] [REDACTED] 2017, [REDACTED] weeks prior to the hearing in this matter. The Respondent acknowledged that the Resident's Medicaid status is "pending" (Recording @ 10:38). Because the appeal of the Resident's denial of Medicaid benefits is pending, the Respondent may not discharge the Resident.

Based upon the evidence produced at the hearing, I find that Respondent has failed to establish a permissible basis for discharging the Resident from Respondent's facility.

#### **DECISION AND ORDER**

1. Respondent has not established a permissible basis for discharge;


2. The appeal is therefore GRANTED;

3. Respondent is not authorized to discharge the Resident;

4. This decision shall be effective upon service on the parties; and

5. 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: Menands, New York  
May 9, 2017**

  
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**JUDE BREARTON MULVEY**  
**Administrative Law Judge**

TO:

Abigail Little  
The Grand Rome  
801 North James Street  
Rome, New York 13440

