



# 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

Nadia Gittens, MSW  
Williamsbridge Manor Nursing Home  
1540 Tomlinson Avenue  
Bronx, New York 10461

[REDACTED], Resident  
c/o Nadia Gittens, MSW  
Social Worker  
Williamsbridge Manor Nursing Home  
1540 Tomlinson Avenue  
Bronx, New York 10461

**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

In the Matter of an Appeal, pursuant to  
10 NYCRR § 415.3, by

████████████████████  
Appellant,

from a determination by

**WILLIAMSBRIDGE MANOR  
NURSING HOME,**  
Respondent,

to discharge him from a residential health care facility.

**DECISION**

A Notice of Transfer/Discharge, dated ██████████, 2017, was issued to ██████████  
("Resident") by Williamsbridge Manor Nursing Home ("Facility"). The Resident appealed the  
Facility's decision to transfer/discharge the Resident to the ██████████ Shelter, ██████████  
██████████ on ██████████ 2017.

On April 13, 2017, a hearing on the appeal was held before Denise Lepicier, Esq.,  
Administrative Law Judge ("ALJ"). The Facility was represented by Nadia Gittens, MSW. The  
Resident, ██████████, represented himself with the assistance of his ██████████ and ██████████

The hearing was held in accordance with the Public Health Law of the State of New  
York; Part 415 of Volume 10 of the New York Code of Rules and Regulations ("NYCRR"); the  
New York State Administrative Procedure Act ("SAPA"); and 10 NYCRR Part 51.

Evidence was received. Witnesses were sworn or affirmed and examined. A recording  
was made of the proceedings. The pre-transfer hearing was held at the Facility, at 1540  
Tomlinson Avenue, Bronx, New York, pursuant to 10 NYCRR § 415.3(h)(2)(i)(b).

The following individuals were present during the hearing: [REDACTED], Resident; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED] of Resident's [REDACTED] Marliss DeMitchell, OT, Director of Rehabilitation; Cheryl Harris, R.N., Nursing Supervisor; Natasha Gordon, C.N.A.; and Nadia Gittens, MSW, Social Worker.

The following documents were admitted into evidence:

ALJ Exhibit I – Letter, Notice of Hearing and the Transfer/Discharge notice from the Facility;

Facility Exhibit 1 – Resident's medical record admission sheet;

Facility Exhibit 2 – Portion of the Resident's progress notes;

Facility Exhibit 3 – Portion of Resident's physician order sheet;

Facility Exhibit 4 – Portion of Resident's medication report.

#### **STATEMENT OF THE CASE**

The Facility issued a notice of transfer/discharge to the Resident on [REDACTED] 2017. (ALJ Ex. I). The Facility alleged that the Resident's health has improved sufficiently so the Resident no longer needed the skilled nursing services provided by the Facility. (ALJ Ex. I) The Facility proposed that the Resident be transferred to the [REDACTED] Shelter. The Resident disagreed with the Facility and appealed.

#### **STATEMENT OF ISSUES**

The issues to be determined in this proceeding are whether the Resident's health has improved sufficiently so the Resident no longer needs the services provided by the Facility and whether the discharge plan is appropriate. The Facility has the burden of proof on these issues. 10 NYCRR § 415.3(h)(2)(iii)(b).

## 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 testimony. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence was considered and rejected in favor of the cited evidence.

1. The Resident, age [REDACTED] was first admitted to Williamsbridge Manor Nursing Home on [REDACTED], 2016, with diagnoses including [REDACTED], [REDACTED], [REDACTED]. (Ex.1; Ex. 3; Ex. 4) His medical record seems to suggest a current [REDACTED], but it may be that this is a reference to a [REDACTED] that resulted in his [REDACTED] (Ex. 3; Ex. 4) His [REDACTED] has been treated and currently is stable. The Resident states that he is not taking any [REDACTED] because he cannot tolerate the side effects. (Testimony of [REDACTED] Testimony of [REDACTED])

2. A recent medical note records that the Resident is medically stable. (Ex. 2)

3. The Resident is alert and oriented to person, place and time. He is able to make his needs known. (Testimony of Cheryl Harris; Testimony of Natasha Gordon)

4. The Resident can feed, groom, and transfer himself independently to his bed. The Resident moves about independently in his wheelchair. However, the Resident needs assistance with [REDACTED] body dressing, with bathing and with toileting in that he needs to be able to situate his wheelchair at a right angle to the toilet to transfer alone. (Testimony of Marliss DeMitchell; Testimony of Natasha Gordon) The Resident also has issues with bowel elimination which he is working on in [REDACTED] counseling at this time. (Testimony of Cheryl Harris; Testimony of

Nadia Gittens)

**CONCLUSIONS**


The documents from the Resident's record, and the testimony of the Facility's witnesses, support the conclusion that the Resident is not yet ready to care for himself independently. The Facility has not demonstrated that the shelter can provide the assistance the Resident needs and, therefore, the shelter is not an appropriate plan at this time.

Based on a review of all of the evidence presented, I determine that the proposed transfer or discharge of the Resident is not appropriate because he currently needs the skilled nursing services of the Facility and that the discharge plan is not appropriate at this time.

**DECISION**

1. The Appeal by the Resident, [REDACTED], is GRANTED;
2. The Facility is not authorized to transfer or discharge the Resident in accordance with the discharge notice; and
3. This Decision may be appealed to a court of competent jurisdiction pursuant to the New York Civil Practice Law and Rules; and
4. This Decision shall be effective on service on the parties by: (1) personal service, or (2) certified mail or (3) registered mail.

DATED: New York, New York  
April 13, 2017

  
Denise Lepicier  
Administrative Law Judge

To:



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Williamsbridge Manor Nursing Home  
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