



# 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 24, 2017

## CERTIFIED MAIL/RETURN RECEIPT

Marla Valentine, SW  
Schnurmacher Center For Rehab & Nursing  
12 Tibbits Avenue  
White Plains, NY 19788

[REDACTED], Resident  
c/o Schnurmacher Center for Rehab  
12 Tibbits Avenue  
White Plains, NY 19788

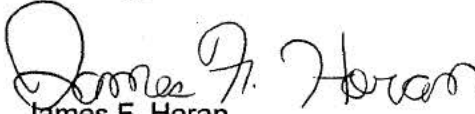
RE: In the Matter of [REDACTED]-Discharge Appeal

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



Larry Kamer, Physical Therapist; Tiffany Hinds, R.N., Director of Nursing; Christine Stubenroll, R.N., Unit Nursing Supervisor; Tracy Marcus, Transition Specialist; Michael Hoch, Administrator; Cathy Hrynko, Finance; and Marla Valentine, Social Worker. The Resident consulted with an attorney from Legal Services of the Hudson Valley, Thomas Mancone, Esq., who was not representing the Resident in this matter, but who gave his view of why the Resident should not be discharged over the telephone at the time of hearing.

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 – Attending physician’s progress note dated [REDACTED]/17;

Facility Exhibit 2 – Social Work note regarding the shelter system dated [REDACTED]/17;

Facility Exhibit 3 – Occupational therapy progress notes dated [REDACTED]/17;

Facility Exhibit 4 – Social Work progress notes concerning discharge;

Facility Exhibit 5 – Out on pass records for Resident;

Facility Exhibit 6 – Psychological progress notes;

Facility Exhibit 7 – Physical and Occupational therapy progress notes;

Facility Exhibit 8 – Medication record.

#### 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 needs the skilled nursing services provided by the Facility. (ALJ Ex. I) The Facility proposed that the Resident be transferred to the [REDACTED] Department of Social Services, [REDACTED], [REDACTED] [REDACTED] for placement in the shelter [REDACTED]. 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 Schnurmacher Center for Rehabilitation and Nursing from [REDACTED] Hospital on [REDACTED] 2016, with diagnoses including rule out [REDACTED] pain. (Testimony of Marla Valentine; Testimony of Christine Stubenroll; Ex. 4, p. 1; Ex. 8) The Resident also states she has [REDACTED], but this is not a diagnoses listed by a physician in her medical record.
2. The attending physician indicates in a progress note dated [REDACTED] 2017, that the Resident is "medically stable and cleared to go to the shelter." (Ex. 1)
3. The Resident is alert and oriented to person, place and time. Her score on the Brief Inventory of Mental Status exam is [REDACTED] the [REDACTED] score. She is able to make her needs known. (Ex. 4, p., 3-4, 7, 11; Testimony of Marla Valentine; Testimony of [REDACTED])
4. Occupational Therapy reevaluated the Resident on [REDACTED], 2017, and found that the Resident could perform all her activities of daily living and her mobility was only assisted by use of a cane. The Resident had no change in functioning since her discharge from occupational therapy on [REDACTED] 2017. (Ex. 3; Testimony of Larry Kamer)

5. Physical therapy progress notes indicate that the Resident can ambulate and transfer with modified independence, meaning in her case that she may need her cane or require more time to complete a task. She is completely independent in bed mobility, from [REDACTED] position. Occupational therapy progress notes indicate that the Resident is independent in all self-care and activities of daily living, and can also accomplish light meal preparation. (Ex. 7; Testimony of Larry Kamer)

6. The Resident can feed, bathe, brush teeth, groom, dress, toilet, walk, climb stairs and transfer herself independently. The Resident ambulates independently with a cane. The Resident wears [REDACTED] type [REDACTED] and has no difficulty walking in them. The Resident has no skilled nursing needs at this time. (Testimony of Christine Stubenroll; Ex. 6, 3/29/17)

7. The Resident frequently goes out of the Facility on pass unescorted, sometimes returning as late as between [REDACTED] at night. (Ex. 5)

8. The Resident informed Social Work that she was awaiting an apartment in a complex known as [REDACTED]. Alternatively, the Resident stated she was on the waiting list for [REDACTED] housing in New Rochelle. Social Work eventually checked on these assertions and was told that neither [REDACTED], nor [REDACTED] has the Resident on their waiting lists. (Ex. 4; Testimony of Marla Valentine)

9. Social Work has suggested adult homes, assisted living residences, YMCA rooms, and enriched housing. Social Work has made contact with other resources in the community to assist the Resident in finding housing. The Resident has rejected all these suggestions for one reason or another. One of the consistent issues is that the Resident wants to save her money to get an apartment to live in with her [REDACTED] (Testimony of Marla Valentine; Ex. 4; Ex. 6)

10. The Resident only collects \$ [REDACTED] in Social Security Disability at this time. Her award is automatically reduced by the federal government taking out money to pay off the Resident's [REDACTED] [REDACTED] It will be almost impossible to obtain an apartment which will allow her to eat and pay rent. The task will be even greater as her [REDACTED] is currently [REDACTED] and will have no job when he is released in [REDACTED] The Resident's reluctance to go to assisted living or an adult home, where only a

portion of her income would be taken and meals are provided, is unrealistic. (Ex. 6)

11. At one point, the Resident stated that she would only consider options in [REDACTED]. Social Work identified an assisted living residence in [REDACTED] which wanted the Resident to come for an interview. The Resident refused to go for the interview. (Testimony of Marla Valentine; Ex. 2; Ex. 4; Ex. 6)

12. The Resident takes tablet and capsule medications, and uses an [REDACTED]. She is aware of what the medications are and what the medications treat. She is capable of administering her own medications. (Testimony of Michele Diberandino; Ex. 8)

### CONCLUSIONS

The documents from the Resident's record, and the testimony of the Facility's witnesses, support the conclusion that the Resident is ready to care for herself independently. The Resident has rejected any consideration of various realistic placements for a person with her issues. The Resident does not want to pay for alternative living quarters because she asserts that she is saving to get an apartment with her [REDACTED]. The Facility has made great efforts to present the Resident with appropriate alternatives but she has rejected all these suggestions.

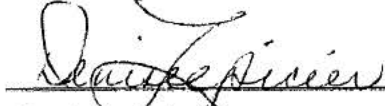
Based on a review of all of the evidence presented, I determine that the proposed transfer or discharge of the Resident is appropriate because she has no skilled nursing needs and that the plan to discharge the Resident to the [REDACTED] Department of Social Services for shelter placement is appropriate in the circumstances.

### DECISION


1. The Appeal by the Resident, [REDACTED], is DENIED; and
2. The Facility is 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 21, 2017

  
Denise Lepicier  
Administrative Law Judge

To:

  
C/o Marla Valentine, Social Worker  
Schnurmacher Center for Rehabilitation and Nursing  
12 Tibbits Avenue  
White Plains, New York 19788

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Schnurmacher Center for Rehabilitation and Nursing  
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