



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

July 20, 2018

## CERTIFIED MAIL/RETURN RECEIPT

Alejandro Forte, Principal Attorney  
Mental Hygiene Legal Services  
C/o Hudson Valley DDSO-Letchworth Campus  
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3 Wilbur Road, Room #57  
Thiells, New York 10984-0470

Ahron Steinberg, Administrator  
Northern Riverview Healthcare Center  
87 South Route 9W  
Haverstraw, New York 10927

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*  
James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cac  
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

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

[REDACTED]

Appellant,

from a determination by

NORTHERN RIVERVIEW  
HEALTHCARE CENTER,

Respondent,

to discharge him from a residential  
healthcare facility

COPY

DECISION  
AND ORDER

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On [REDACTED] 2018, Northern Riverview Healthcare Center ("the Facility") transferred [REDACTED] ("the Resident") to [REDACTED] [REDACTED] hospital ("the Hospital") for a [REDACTED] evaluation. He was evaluated in the emergency room of the Hospital and cleared for return to the Facility. The Facility, however, refused to readmit the Resident. On [REDACTED] 2018, a social worker at the Hospital contacted the New York State Health Department's hotline on the Resident's behalf to request the commencement of this appeal. On July 10, 2018, a hearing on the appeal 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 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.

The hearing was held at the Hospital. Evidence was received, witnesses were sworn or affirmed and examined. An audio recording of the proceedings was made. The following individuals were present for the hearing: [REDACTED] Resident; Alejandro Forte, Esq., Mental Hygiene Legal Services; Victoria Dapaah, R.N., the Facility's Director of Nursing Services; Ahron Steinberg, the Facility's Administrator; Mark Scher, M.D., Psychiatrist at the Hospital; Lamia Botros, M.D. and Mariveila Tosado, M.D., Office of Mental Health.

At the conclusion of the hearing, the Administrative Law Judge rendered an oral decision and order on the record, requiring the Facility to readmit the Resident to the first available semi-private male bed, before admitting any other resident. The Facility's Administrator indicated that a bed was available, and the Facility re-admitted the Resident the following day. This written decision confirms the oral decision and order made on July 10, 2018.

#### ISSUES

The issues to be determined in this proceeding are whether the Facility's discharge of the Resident was necessary and the

discharge plan was appropriate. The Facility has the burden of proof and must prove 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 was admitted to the Facility on [REDACTED] 2018. His diagnoses included [REDACTED]

[REDACTED] He is [REDACTED] years of age. (Facility Ex. 1; Recording 1 @ 15:25).

2. The Resident is required to take medications which are given to him by nursing staff at the Facility. At times, the Resident refuses to comply with their directions for him to take his medications. (Recording 2 @ 3:30).

3. On [REDACTED] 2018, the Resident was very upset and began complaining about issues at the Facility including the food, cleanliness and staffing. (Recording 3 @ 26:00).

4. The Facility sent the Resident to the Hospital for an evaluation to determine whether he was a [REDACTED] [REDACTED] (Recording 2 @ 9:30).

5. The Resident was seen in the emergency room of the Hospital, and a [REDACTED] determined that he was [REDACTED] stable and did not require hospitalization. (Recording 3 @ 3:18, 5:15).

6. The Hospital advised the Facility that the Resident could return, but the Facility refused to readmit him. (Recording 2 @ 12:10).

7. The Resident has not exhibited any behavioral issues while at the Hospital and will not benefit from continued hospitalization. (Recording 3 @ 3:00, 7:10).

8. The Facility did not have a conversation with the Resident about discharge planning and never gave him a discharge notice. (Recording 3 @ 23:30).

9. The Resident may not require nursing home care, but he cannot live independently. (Recording 3 @ 6:00).

#### ANALYSIS AND CONCLUSIONS

Ms. Dapaah, the Facility's Director of Nursing, testified that the Resident was [REDACTED] that he [REDACTED] continuously, that his behavior could not be managed, and that he

wants things done his way. She alleged that an interdisciplinary care team including two social workers and the Resident's attending physician met to discuss discharge planning and determined that the Resident endangered the safety and health of the other residents in the Facility and that he should be discharged to the [REDACTED] located in [REDACTED]. She also alleged that a social worker gave a copy of a discharge notice to the Resident.

Mr. Steinberg, the Facility's Administrator, admitted that the Facility sent the Resident to the Hospital for an evaluation and that he would not readmit the Resident when he was advised that the Resident did not require hospitalization. He stated that the Resident complains [REDACTED]

[REDACTED] towards one of the Facility's

[REDACTED] Mr. Steinberg alleged that "the State told [the Facility to] do a thirty day notice no matter where it is." He claimed that the Resident wanted to go to the motel and had a debit card so he could pay for it. Mr. Steinberg offered into evidence a copy of an Order of Conditions which was imposed on the Resident in [REDACTED] 2013, which states that the Resident had been found to have "a [REDACTED] pursuant to the Criminal Procedure Law of the State of New York. (Facility Ex. 1).



Dr. Scher, a psychiatrist at the Hospital, established that the Resident was [REDACTED] stable at the time of the evaluation on [REDACTED] 2018, and did not require hospitalization. He stated that the Resident was later admitted to the Hospital from its emergency room only to prevent the Resident's isolation there while awaiting his return to the Facility. In Dr. Scher's opinion, the Resident may not require nursing home care, but cannot live independently.

Dr. Botros, a psychiatrist with the Office of Mental Health, testified regarding the Resident's history over the past several years and the Resident's compliance with the Order of Conditions. She stated that the Resident had no known issues of noncompliance until the Facility reported the Resident's refusal to take his prescribed medications and other behavioral issues.

Having considered the entire record, I find that the Facility failed to establish a basis for its refusal to readmit the Resident from the Hospital. Upon receiving the report of the [REDACTED] evaluation which concluded that the Resident was not a danger to himself or others, the Facility was required to cooperate with arrangements for the Resident's prompt return. I find that the testimony of the Facility witnesses alleging that the Resident requested that he be discharged to a motel was not credible, and

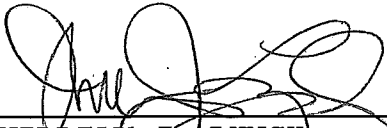
I find that discharging the Resident to a motel where he would live independently was not an appropriate discharge plan.

DECISION AND ORDER

1. This Decision confirms the oral decision made on the record on July 10, 2018, requiring the Facility to readmit the Resident;

2. 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  
July 18, 2018

  
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WILLIAM J. LYNCH  
Administrative Law Judge

To:

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