



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

February 15, 2019

## CERTIFIED MAIL/RETURN RECEIPT

Tatyana Polik, DSW  
New York Center for Rehabilitation  
26-13 21<sup>st</sup> Street  
Astoria, New York 11102

[REDACTED]  
c/o New York Center for Rehabilitation  
26-13 21<sup>st</sup> Street  
Astoria, New York 11102



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: cmg  
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

**New York Center for  
Rehabilitation and Nursing**

Respondent,

to discharge her from a residential  
health care facility.

**ORIGINAL**

**DECISION**

Hearing Before: Natalie J. Bordeaux  
Administrative Law Judge

Held at: New York Center for Rehabilitation and Nursing  
26-13 21<sup>st</sup> Street  
Astoria, New York 11102

Hearing Date: February 14, 2019

Parties: New York Center for Rehabilitation and Nursing  
By: Tatiana Polyak, Director of Social Work

[REDACTED]

*Pro se*

**JURISDICTION**

By notice dated ██████████, 2019, New York Center for Rehabilitation and Nursing (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge ██████████ (the Appellant). The Appellant's ██████████ appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(h).

**HEARING RECORD**

Facility witnesses:	Tatyana Polyak, Director of Social Work Rosalina M. Ramos, Physical Therapist
Facility exhibits:	1-6
Appellant witnesses:	None
Appellant exhibits:	None
ALJ exhibits:	I-II

A transcript of the hearing was made.

**DISCUSSION**

Department regulations at 10 NYCRR § 415.3(h) describe the transfer and discharge rights of residential health care facility residents. The Appellant was admitted to the Facility on ██████████ 2018 from ██████████ Hospital for short-term rehabilitation after surgery. (Exhibit 1.) By notice dated ██████████ 2019, the Facility determined to discharge the Appellant, effective ██████████, 2019, because the Appellant's health has improved. The notice advised that the Appellant would be discharged to ██████████ Shelter, located at ██████████ ██████████. (Exhibit 3.)

The Appellant's clinical record contains documentation from the Appellant's physician and interdisciplinary care team that the Appellant's condition has improved to the extent that her

needs can be met in the community. The Appellant's medical conditions are stable and do not require skilled nursing care. She has completed all prescribed occupational and physical therapies and is able to complete all activities of daily living with supervision. The Appellant can safely ambulate over [REDACTED] feet with a rolling walker. (Exhibits 2 and 4.)

Prior to the issuance of the discharge notice, the Facility's social work staff had engaged in many discussions with the Appellant and her [REDACTED] regarding alternative discharge arrangements. The Appellant has no available home in the United States. She is ineligible for placement at an assisted living facility because she receives no income in the United States. Although the Appellant had expressed a desire to return to her home in [REDACTED] her [REDACTED] (who had occupied the Appellant's room at the Facility, showering and receiving meals there throughout the Appellant's stay) disagreed with the Appellant's expressed wishes. Nevertheless, in furtherance of the Appellant's stated objective, the Facility provided the Appellant with \$ [REDACTED] in cash for the cost of a one-way plane ticket to [REDACTED] (Exhibit 4.) The Appellant has a home in [REDACTED] receives income in [REDACTED] and will be able to access healthcare in [REDACTED] She is also able to safely travel to the airport, board an airplane, and travel by air. (Polyak testimony.)

On [REDACTED], 2019, the Appellant's [REDACTED] informed Facility staff that the Appellant was discharging herself that day, and would plan the Appellant's return to [REDACTED] once she settled in at [REDACTED] Shelter. The Appellant and her [REDACTED] presented themselves at the [REDACTED] Shelter several hours later. (Exhibit 4.) That same day, the Appellant's [REDACTED] requested this hearing to challenge the Facility's discharge determination because the shelter did not allow her to remain with the Appellant in the same quarters. (Exhibit 4.)

The Appellant's [REDACTED] who is undomiciled, provided the Department's Bureau of Adjudication with a post office box address for receiving correspondence. A copy of the hearing

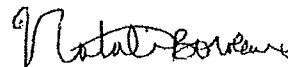
notice was sent to that address, which the Appellant's ██████████ received. (Exhibits I and II.) She had reappeared at the Facility the week before the scheduled hearing date to complete an employment application and duly advised the Director of Social Work that she "would see [her] next week." There was no reason for the Appellant's ██████████ to return to the Facility other than to attend this hearing. (Polyak Testimony.) Although duly notified of the time and place of the hearing, the Appellant did not appear for the scheduled hearing, either in person or through a representative, and did not request an adjournment of the scheduled hearing. (Exhibit I.)

The Appellant has therefore abandoned this hearing.

**DECISION**

There is no issue to be decided regarding the Facility's ██████████ 2019 determination to discharge the Appellant.

Dated: February 14, 2019  
New York, New York



---

Natalie J. Bordeaux  
Administrative Law Judge