



# 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 25, 2019

## CERTIFIED MAIL/RETURN RECEIPT

Paul Mullman, Director of Social Work  
Quantum Rehabilitation and Nursing  
63 Oak Crest Avenue  
Middle Island, New York 11953

██████████  
c/o Quantum Rehabilitation and Nursing  
63 Oak Crest Avenue  
Middle Island, New York 11953

**RE: In the Matter of ██████████ – 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

**Quantum Rehabilitation and Nursing,**

Respondent,

to discharge her from a residential health care facility.

---

**ORIGINAL**

**DECISION**

**Hearing Before:**

Ann H. Gayle  
Administrative Law Judge

**Held at:**

Quantum Rehabilitation and Nursing  
63 Oak Crest Avenue  
Middle Island, New York 11953

**Hearing Date:**

February 20, 2019

**Parties:**

Quantum Rehabilitation and Nursing  
By: Paul Mullman, Director of Social Work

[REDACTED]

*Pro Se*

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as Quantum Rehabilitation and Nursing (“Respondent” or “Facility”) is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(h). Respondent determined to discharge [REDACTED] (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(a)(2) which provides, in pertinent part:

- (a) the resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident’s designated representative, determines that:
  - ...
  - (2) the transfer or discharge is appropriate because the resident’s health has improved sufficiently so the resident no longer needs the services provided by the facility.

Appellant appealed the discharge determination to the New York State Department of Health, and a hearing on that appeal was held. Pursuant to 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate. SAPA § 306(1) provides that the standard of proof shall be by substantial evidence. “Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact; it is less than a preponderance of the evidence but more than mere surmise, conjecture or speculation. . . . Put differently, there must be a rational basis for the decision. (Citations omitted)” (*Stoker v. Tarentino*, 101 A.D.2d 651, 652, 475 N.Y.S.2d 562, 564 [App. Div. 3d Dept. 1984], mod. 64 N.Y.2d 994, 489 N.Y.S.2d 43.

A digital recording of the hearing was made part of the record. Appellant appeared and testified on her own behalf, and █ and █ were called as witnesses for Appellant. █ testified for Respondent.

The following documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ, Facility, and Resident Exhibits:

ALJ:

I: Notice of Hearing with the Facility’s Discharge Notice attached

Facility:

- 1: █ 2019 email from Dr. Divaris
- 2: █ 2019 out on pass documents
- 3: █ 2019 letter from Dr. Kao
- 4: █ 2018 fax cover sheet re: SILO application
- 5: █ 2019 fax cover sheet re: SPA application
- 6: █ 2019 OT and PT notes

Resident:

- A: █, 2019 letter from Dr. Divaris
- B: █ 2019 report of Dr. Makil
- C: █ 2019 report of Dr. Divaris
- D: █ 2019 report of Dr. Divaris

**ISSUE**

Has Quantum Rehabilitation and Nursing established that the transfer is necessary and the discharge plan is appropriate?

**FINDINGS OF FACT**

Citations in parentheses refer to testimony (“T”) of witnesses and exhibits (“Ex”) found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejecting in favor of the cited evidence.

- 1. Respondent, Quantum Rehabilitation and Nursing, is a residential health care facility located in Middle Island, New York. (Ex I)
- 2. Appellant, █, age █ was admitted to the Facility on █ 2018, from █ Medical Center, for rehabilitative therapy following a █. Appellant

received physical therapy (“PT”) and occupational therapy (“OT”) in 2018 and again from █, 2019. Appellant had infected █ in her █ extremity █ at █ Medical Center on █ 2019, and she received █ from █ 2019. (Ex 6; Ex B; T █)

3. Appellant is independent in wheelchair mobility and with her ADLs (activities of daily living). On █ 2019, Appellant was able to transfer to bed, chair and sit-to-stand with contact guard, and she was able to ambulate █ feet with a rolling walker with supervision, but Appellant is currently unable to ambulate independently with a walker. On █ 2019, Dr. Makil reported “no PT yet per ortho – just stretching exercises” (Ex B). Dr. Divaris reported in his █ 2019 letter that Appellant “has currently been advised to remain nonweight bearing on her █ and to not yet start any physical therapy” (Ex A), and in his █ 2019 email (the day before the hearing) that Appellant “can be WBAT<sup>1</sup> for transfers and ambulation no more than █ feet” (Ex 1). (Ex 1; Ex 6; Ex A; Ex B; T █ Appellant)

4. By notice dated █ 2019, Respondent advised Appellant that it had determined to discharge her on the grounds that her health has improved sufficiently so that she no longer needs the services provided by the Facility. Respondent’s discharge plan is to transfer Appellant to the █ County Department of Social Services (“DSS” or “Shelter”) located at █. DSS does not accept persons in wheelchairs. (Ex I; T Mullman)

5. It is the professional opinion of Appellant’s caregivers at the Facility, including the Facility’s physician, that discharge to the community, including the Shelter, is appropriate for Appellant. (Ex 3; T █)

6. Appellant has remained at the Facility pending the outcome of this proceeding.

---

<sup>1</sup> *weight-bearing as tolerated*

**DISCUSSION**

The evidence presented by both Appellant and Respondent demonstrated that the proposed discharge location, the Shelter, which does not accept persons in wheelchairs, is not an appropriate discharge location for Appellant who is wheelchair-bound and not currently ambulating independently with a walker. Dr. Kao's statement in his █, 2019 letter that Appellant "is medically cleared for discharge to DSS housing and/or shelter" (Ex 3) is superseded by Appellant's community physicians' subsequent reports of █, 2019, that Appellant was "advised to remain nonweight bearing ... and not yet start any [PT]" (Ex A) and to do "just stretching exercises" (Ex B), and of █ 2019, that she "can be WBAT for transfers and ambulation no more than █ feet" (Ex 1). Appellant's community physician's direction of "ambulation no more than █ feet" the day before the hearing established that Appellant cannot be discharged to a setting that would not accept her in her wheelchair.

Mr. █ submitted an application to █  
█) in █ 2018 and to █) in █ 2019, and Appellant is working with Respondent and her friends, █ and █, to secure independent living through these organizations. The parties are encouraged to continue these efforts.

Having found that the discharge location is not suitable for Appellant at this time, the issue of whether Appellant's health has improved sufficiently that she no longer requires the services of the Facility will not be addressed.

**CONCLUSION**

Respondent has not proven that discharge to the Shelter is appropriate for Appellant at this time.

DECISION


I find that the discharge plan is not appropriate for Appellant at this time.

The appeal by Appellant is therefore GRANTED.

Respondent—Quantum Rehabilitation and Nursing is NOT authorized to discharge Appellant in accordance with its █, 2019 discharge notice.

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: New York, New York  
February 25, 2019

  
Ann H. Gayle  
Administrative Law Judge

TO: █  
c/o Quantum Rehabilitation and Nursing  
63 Oak Crest Avenue  
Middle Island, New York 11953

█, Social Worker  
Quantum Rehabilitation and Nursing  
63 Oak Crest Avenue  
Middle Island, New York 11953