



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

June 11, 2019

## CERTIFIED MAIL/RETURN RECEIPT

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

Paul Mullman, Social Worker  
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**

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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.

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**COPY**

**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:**

May 29, 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 LPN Sophia Livermore was called as a witness for Appellant. Paul Mullman 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: Physician progress note
- 2: Rehab progress note

Resident:

A: Lab results

**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 from ██████████ to the Facility on ██████████ 2019. (T Mullman, Appellant)
3. Appellant received physical therapy (“PT”) at the Facility from ██████████ to ██████████ 2019. Appellant was discharged from PT when she achieved “baseline/her level of functioning from

prior to her admission to the Facility.” Appellant is independent with her ADLs (activities of daily living) and she is able to ambulate with a rolling walker but she prefers to use her wheelchair. (Ex 2; T Mullman, Appellant)

4. Appellant’s medical condition is stable and she is able to independently change the dressing for her ██████████. (Ex A; T Mullman, Livermore, Appellant)

5. 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”) located ██████████ ██████████. (Ex I; T Mullman)

6. It is the professional opinion of Appellant’s caregivers at the Facility, including the Facility’s physician, that discharge to the community, including a DSS shelter, is appropriate for Appellant. (Ex 1; T Mullman)

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

#### DISCUSSION

It should be noted from the outset that Appellant’s requests for an adjournment of the hearing made at the start of the hearing and at various intervals during the hearing were denied. Appellant acknowledged receiving and reading the Notice of Hearing which states in part “At the hearing, a record will be made. Each party may ... present witnesses and evidence ... You may offer testimony at hearing and produce documents into the record ... Requests for adjournments must be made ... at least three (3) days prior to the scheduled hearing date.” (ALJ Exhibit I). Breaks were taken during the course of the hearing to give Appellant the opportunity to obtain documents she wished to offer into evidence and bring potential witnesses to the hearing room.

Appellant was able to obtain her lab results and introduce them into evidence (Exhibit A) and to have LPN Livermore testify. Toward the end of the hearing Appellant made a request to continue the hearing on a subsequent date so that additional witnesses could give testimony to the effect that Appellant requires a wheelchair for ambulation; this request was denied based on the testimony and evidence that was already received at the hearing.

Appellant testified that her walking ability is the same now as it was before she entered the Facility and that she can walk short distances. Furthermore, after initially denying that she goes out on pass only with her wheelchair, Appellant eventually admitted that she does go out on pass with her rolling walker and no wheelchair as long as she is not going shopping. The testimony and evidence presented by Respondent demonstrated that: Appellant is able to ambulate with a rolling walker in her room and when she goes out on pass with the rolling walker and no wheelchair; she prefers using a wheelchair; and Appellant refused to walk in PT because walking would “affect my appeal” and that “displaying her ability to walk would increase the chances of her eviction from facility – in so many words.” (Exhibit 2).

The evidence presented by both Appellant and Respondent proved that Appellant’s health has improved sufficiently so that she no longer needs the services provided by the Facility in that she goes out on pass regularly and she independently can change her dressing and perform her ADLs, and that discharge to DSS is appropriate.

Appellant testified that she has been homeless for 4½ years and has lived in shelters and temporary housing during that time, and that her most recent temporary housing was a room at the ██████████. Appellant believes living in a DSS shelter is inappropriate for her in part because of her wound, but Appellant has demonstrated that she is

able to change her dressing; furthermore, Mr. Mullman testified that home care services can assist with this and that discharge to DSS includes temporary housing which is not a shelter.

Mr. Mullman reported that although Appellant previously declined consideration for placement in a Medicaid adult home, she remains eligible for such placement, and an application was submitted to SPA (Single Point of Access) in ██████████ 2019; Appellant is working on her own as well as with Respondent to secure independent living through this organization.

Mr. Mullman testified that Appellant obtained Facility Medicaid in May, and she will be eligible for community Medicaid upon discharge to the community; and because she is eligible to receive home care through Medicare and home attendant care through Medicaid, a home care agency will evaluate Appellant at the time of discharge to assess the specific services she could receive in the community. Mr. Mullman further testified that Appellant will be discharged with a wheelchair and a rolling walker and any other equipment she is deemed to require at the time of discharge.

The parties' understanding of whether Appellant could be discharged to DSS if she needs a wheelchair differed. Appellant believes DSS will not accept her in a wheelchair, but Mr. Mullman persuasively testified that DSS will accept Appellant in a wheelchair, citing the fact that Appellant lived in DSS temporary housing as recently as immediately prior to her admission to the hospital and subsequent admission to the Facility earlier this year. The parties were advised that if DSS would not accept Appellant with a wheelchair, she would need to remain at the Facility until further discharge planning secured an appropriate discharge location for Appellant.

#### **DECISION**

I find that the Facility has proved by substantial evidence that the discharge is necessary.

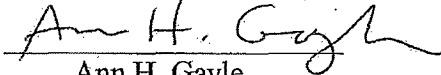
██████/Quantum

The appeal by Appellant is therefore DENIED.

Respondent, Quantum Rehabilitation and Nursing, is authorized to discharge Appellant in accordance with the ████████ 2019 Discharge Notice. The discharge shall occur no sooner than the next weekday following the date Respondent receives confirmation from ████████ County DSS that it will accept Appellant with a wheelchair and rolling walker.

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  
June 10, 2019

  
Ann H. Gayle  
Administrative Law Judge

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