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# Department of Health

ANDREW M. CUOMO  
Governor

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

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

January 15, 2020

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Mayfair Care Center  
100 Baldwin Road  
Hempstead, New York 11550

Subrina Charles, Administrator  
Mayfair Care Center  
100 Baldwin Road  
Hempstead, New York 11550

**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

**Mayfair Care Center,**

Respondent,

to discharge him from a residential health care facility.

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**COPY**

**DECISION**

**Hearing Before:**

Ann H. Gayle  
Administrative Law Judge

**Held at:**

Mayfair Care Center  
100 Baldwin Road  
Hempstead, New York 11550

**Hearing Date:**

January 7, 2020

**Parties:**

Mayfair Care Center  
By: Subrina Charles, Administrator

**[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 Mayfair Care Center (“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 ████████ (“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 his own behalf. Administrator Subrina Charles, Rehab Director Charmi Patel, Registered Dietician ██████████, Social Workers ██████████ and ██████████, and Nurse Supervisor ██████████ testified for Respondent.

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

ALJ:

- I: Notice of Hearing with the Facility’s ██████████/19 Discharge Notice<sup>1</sup> attached
- II: Facility’s ██████████/19 Discharge Notice

Facility:

- 1: Social Work and Nurse Practitioner notes
- 2: Facility’s ██████████, 2019 Discharge Notice<sup>2</sup>
- 3: Homeless Shelter referrals
- 4: HMO denial correspondence
- 5: MAR and TAR (Medication and Treatment Administration Records).

Appellant was given the opportunity but did not offer any exhibits.

**ISSUE**

Has Mayfair Care Center 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.

- 1. Respondent, Mayfair Care Center (“Mayfair”) is a residential health care facility located in Hempstead, New York. (Ex I; Ex II)

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<sup>1</sup> This Discharge Notice’s stated grounds for discharge were the safety or health of residents in the facility would be endangered; these grounds were mistakenly stated.

<sup>2</sup> This Discharge Notice’s stated grounds for discharge were the resident’s health improved sufficiently and failure to pay. Respondent is seeking to discharge Appellant on the grounds that his health has improved sufficiently.

██████ / Mayfair

2. Appellant, ██████, age ██████ was admitted to the Facility on ██████ 2019 for short-term care following a hospitalization at ██████ wherein he had surgery on his ██████ and ██████ for ██████. Appellant currently receives no skilled care. Appellant is independent in all his ADLs (activities of daily living) and he ambulates independently. (Ex 1; Ex 5; T Charles, Patel, ██████)

3. Appellant received speech therapy from ██████/19, physical therapy from ██████/19, and occupational therapy from ██████/19 when he reached his goals in each discipline. (T Charles, Patel)

4. By notice dated ██████, 2019, Respondent advised Appellant that it had determined to discharge him on the grounds that his health has improved sufficiently so that he no longer needs the services provided by the Facility. (Ex 2)

5. Appellant's past and present medical conditions include ██████ with ██████ (Exhibit 5 lists both), ██████ pain, ██████ and ██████. These chronic conditions, as well as any possible need for treatment of wounds that might open in the future do not currently require skilled care, and they can be treated in the community at this time. (Ex 1; Ex 5; T Charles)

6. Respondent's discharge plan is to discharge Appellant to ██████ County Department of Social Services ("DSS") Homeless Shelters ("Shelter") located at ██████. Appellant will be discharged with prescriptions for his medications. Respondent will provide transportation to the Shelter. The Shelter will provide temporary housing, and the Shelter social worker will make medical and other appointments and referrals and will assist Appellant with obtaining SNAP, Medicaid, and permanent housing. (Ex 2; T ██████ ██████)

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7. It is the professional opinion of Appellant's caregivers at the Facility that discharge to the community, including the Shelter which has accepted Appellant, is appropriate for Appellant who requires no skilled care and is independent and capable of managing his medications, nutritional needs, and medical treatment in the community. (Ex 1; T Charles, Patel, ██████  
██████ ██████

8. Appellant has remained at Mayfair pending the outcome of this proceeding.

### DISCUSSION

The evidence presented by Respondent demonstrated that: Appellant is independent with his ADLs; he has no skilled needs; his medical conditions are stable and can be treated in the community; he is capable of managing his health care needs; he ambulates independently; and discharge to the Shelter is an appropriate discharge plan for Appellant. The Shelter will provide assistance with securing housing and other services in the community.

Ms. Charles testified that: Appellant attempted to ████████████████████ in ██████████ County when he received upsetting news; he was brought to ████████████████████ in ██████████ where he was admitted for surgical intervention, care and treatment; when Appellant was ready for discharge, numerous skilled facilities refused to accept him; Respondent accepted Appellant and worked vigorously and relentlessly to arrange for Medicaid funding<sup>3</sup> for Appellant's stay at the Facility; and Appellant's insurance carrier, ██████ Care, denied continued subacute rehabilitation coverage effective ██████████, 2019 (Exhibit 4).

Appellant and Respondent's witnesses testified that the Shelter was identified as a discharge location because Appellant's home in ██████████ is no longer available, and there are no family members with whom Appellant can reside; Appellant's ██████████ resides in ██████████

<sup>3</sup> Ms. Charles testified that Medicaid funding was not readily available because the Facility is not in Appellant's county of residence; Appellant's local DSS office for his Medicaid benefits is in ██████████ County and the Facility is in ██████████ County.

██████ / Mayfair

██████ his ██████ resides in ██████ housing, and neither home is available for Appellant. Ms. Johnson testified that the Shelter application was submitted on ██████ 2019, and the Shelter accepted Appellant.

Appellant believes that his conditions, particularly his ██████ that are currently healed and closed but require treatment when they ██████ from time to time, require a continued stay at the Facility. Appellant is concerned that his ██████ pain and his inability to ██████ to ██████ which he needs to do when his ██████ and require treatment will cause his now stable medical conditions to deteriorate in the Shelter. Ms. Charles testified that Respondent cannot keep residents in its Facility when they require no skilled care and the insurance carrier has discontinued coverage because the resident (Appellant) has reached maximum potential and he does not require skilled care.

#### CONCLUSION

Respondent has proven that Appellant's health has improved sufficiently that he no longer requires skilled care, and that discharge to the Shelter system is appropriate for Appellant at this time. Speculation that past or current medical conditions might recur or worsen in the future is not sufficient to warrant remaining in a skilled facility when there are no skilled needs, and the discharge location has been shown to be appropriate.

#### DECISION

I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

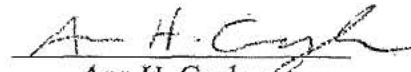
Respondent, Mayfair Care Center, is authorized to discharge Appellant in accordance with the (Exhibit 2) ██████, 2019 discharge notice.



██████ / Mayfair

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  
January 15, 2020

  
Ann H. Gayle  
Administrative Law Judge

TO: ██████████  
c/o Mayfair Care Center  
100 Baldwin Road  
Hempstead, New York 11550

Subrina Charles, Administrator  
Mayfair Care Center  
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