



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

January 31, 2017

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Dumont Center for Rehab & Nursing  
676 Pelham Road  
New Rochelle, New York 10805

Anthony DeFrancesco  
1427 Pine Brook Court  
Yorktown Heights, New York 10598

Tzvi Barax, Administrator  
Dumont Center for Rehab & Nursing  
676 Pelham Road  
New Rochelle, New York 10805

**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:nm

Enclosure

STATE OF NEW YORK: DEPARTMENT OF HEALTH

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

██████████,  
Appellant,

from a determination by

**DUMONT CENTER FOR  
REHABILITATION & NURSING CARE**  
Respondent,

to discharge him from a residential health care facility.

COPY

DECISION

A Notice of Transfer/Discharge, dated ██████████ 2016, was issued to ██████████ ("Resident") by Dumont Center for Rehabilitation & Nursing Care ("Facility"). The Resident appealed the Facility's decision to transfer/discharge the Resident to an assisted living facility on ██████████ 2016.

On ██████████ 2016, the parties appeared for a hearing, but the Resident requested an adjournment to obtain an attorney. An adjournment was granted and a hearing on the appeal was held before Denise Lepicier, Esq., Administrative Law Judge ("ALJ") on January 13, 2017. The Facility was represented by Tzvi Barax, Administrator. The Resident, James Lewis, represented himself, with the assistance of some friends.

The hearing was held in accordance with the Public Health Law of the State of New York; Part 415 of Volume 10 of the New York Code of Rules and Regulations ("NYCRR"); the New York State Administrative Procedure Act ("SAPA"); and 10 NYCRR Part 51.

Evidence was received. Witnesses were sworn or affirmed and examined. A recording

was made of the proceedings. The pre-transfer hearing was held at the Facility, at 676 Pelham Road, New Rochelle, New York 10805, pursuant to 10 NYCRR § 415.3(h)(2)(i)(b).

The following individuals were present during the hearing: [REDACTED], Resident; [REDACTED], Resident's [REDACTED] [REDACTED], Resident's friend; [REDACTED] Resident's [REDACTED] Marsha Friedman, Ombudsman; Aileen Tubale, Physical Therapist; Quirina Naron, Director of Nursing Services; Lilibeth Salvador, R.N.; Tamika Greaves, M.S.W.; Morica Victor, Administrative Assistant; and Tzvi Barax, Administrator.

The following documents were admitted into evidence:

ALJ Exhibit I - Notice of Hearing and accompanying documents including the Transfer/Discharge notice from the Facility;

ALJ Exhibit II – Adjournment Confirmation letter;

Facility Exhibit A – Medical Record face sheet;

Facility Exhibit B – Attending Physician's note;

Facility Exhibit C – Psychological Consult note;

Facility Exhibit D – Notes of R. Khader, M.D. and S. Miller, R.N. regarding [REDACTED] wound;

Resident's Exhibit 1 – Emails from [REDACTED] in the Resident's behalf.

#### STATEMENT OF THE CASE

The Facility issued a notice of transfer/discharge to the Resident on [REDACTED] 2016. (ALJ Ex. I). The Facility alleged that the Resident's health has improved sufficiently so the Resident no longer needs the skilled nursing services provided by the Facility. (ALJ Ex. I) The Facility proposed that the Resident be transferred to an assisted living facility. The Resident disagreed with the Facility and appealed. Subsequent to the proceeding, the ALJ requested more

information regarding the Resident's recently discovered [REDACTED] wound. The Facility provided information concerning the wound from the attending and this information was marked into evidence as Facility's Exhibit D, and the Resident responded to this information via emails from his friend and this information was marked as Resident's Exhibit 1.

### STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether the Resident's health has improved sufficiently so the Resident no longer needs the services provided by the Facility and whether the discharge plan is appropriate. The Facility has the burden of proof on these issues. 10 NYCRR § 415.3(h)(2)(iii)(b).

### 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 exhibits or testimony. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence was considered and rejected in favor of the cited evidence.

1. The Resident, age [REDACTED] was admitted to the Facility at least [REDACTED] years ago having suffered [REDACTED] which required the [REDACTED] of his [REDACTED]. (Testimony of [REDACTED])

2. The Resident's current diagnoses include hyp [REDACTED] [REDACTED]. The Resident has had no recent [REDACTED]. All his medical issues can be addressed in the community and he has not [REDACTED] in years. He currently has a [REDACTED] wound on his [REDACTED], but his wound care can also be addressed in the

community. (Testimony of Lilibeth Salvador; Testimony of Quirina Naron; Fac. Ex. D)

3. The Resident is alert and oriented to person, place and time. He scored the highest possible score on the Brief Inventory of Mental Status. He is able to make his needs known, though he is quiet. (Testimony of Lilibeth Salvador; Testimony of Tamika Greaves; Testimony of Marsh Friedman; Fac. Ex. C)

4. The Resident can feed, dress, groom, bathe, toilet, and transfer himself. He has a [REDACTED] for his [REDACTED] and he ambulates with a [REDACTED] independently throughout the Facility. His balance and gait are good. (Testimony of Lilibeth Salvador; Testimony of Aileen Tubale)

5. The Resident has no skilled nursing needs at this time. (Testimony of Tzvi Barax; Fac. Ex. B) The Facility attending physician believes the Resident is medically stable and that the Resident is appropriate for a more independent living situation with support. (Fac. Ex. B) A recent [REDACTED] wound is healing, [REDACTED] (Fac. Ex. D)

6. The Facility has proposed transfer to an assisted living facility, the [REDACTED]. At the assisted living facility, the Resident would have housing, showers, laundry, meals and snacks provided. Registered Nurses are available 24 hours per day. Aides are available to provide support to Residents. Supportive services for alcohol abuse are available if needed. Physical therapy, occupational therapy, and speech therapy are all provided at the Facility. The attending at the Facility is also the attending at the assisted living facility. Should the Resident require additional wound care, there is a wound care specialist at the assisted living facility. (Fac. Ex. D) If the Resident needed other medical services, the assisted living facility would help set up future appointments and appropriate transportation. (Testimony of Tamika Greaves)

## CONCLUSIONS

The documents from the Resident's record and the testimony of the Facility's witnesses, support the conclusion that the Resident has no skilled nursing needs at this time. The Resident's friends were concerned that the Resident might relapse with respect to his [REDACTED] use in a more independent environment, but that is the risk any individual recovering from [REDACTED] faces and this assisted living facility has services for those with substance abuse issues. The Resident's friends and the ombudsman were concerned that the Resident is [REDACTED] and quiet to inform anyone at the facility when he needs help. However, the Facility can insure that the assisted living facility is notified of all the Resident's diagnoses and that he may not mention his needs because of his personality. The Resident has many friends at the Facility. The Facility has made clear that the Resident is welcome to visit at the Facility and even participate in activities as a volunteer if he wishes to do so.


Based on a review of all of the evidence presented, I determine that the Facility has proven by substantial evidence that the proposed transfer or discharge of the Resident is appropriate pursuant to 10 NYCRR§415.3(h)(1)(i)(a)(2) because he no longer needs the skilled nursing services of the Facility and because the discharge plan is appropriate.

## DECISION


1. The Appeal by the Resident, [REDACTED], is **DENIED**;
2. The Facility is authorized to transfer or discharge the Resident to the assisted living facility; and
3. This Decision may be appealed to a court of competent jurisdiction pursuant to the New York Civil Practice Law and Rules; and

4. This Decision shall be effective on service on the parties by: (1) personal service, or (2) certified mail or (3) registered mail.

DATED: New York, New York  
January 30, 2017

  
Denise Lepicier  
Administrative Law Judge

To:

  
C/o Dumont Center for Rehabilitation & Nursing  
676 Pelham Road  
New Rochelle, New York 10805

Tzvi Barax, Administrator  
Dumont Center for Rehabilitation & Nursing  
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