



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

December 4, 2017

## CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]  
c/o Medford Multicare Center  
3115 Horseblock Road  
Medford, New York 11763

Lucille Preziotti, Director of Social Work  
Medford Multicare Center  
3115 Horseblock Road  
Medford, New York 11763

Barbara Phair, Esq.  
Abrams, Fensterman  
3 Dakota Drive, Suite 300  
Lake Success, New York 11042

**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: ISM  
Enclosure



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 Medford Multicare 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)(b), which provides, in pertinent part:

Transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third-party insurance) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility the facility may charge a resident only allowable charges under Medicaid. Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the funds.

Appellant appealed the discharge determination to the New York State (“NYS”) Department of Health (“DOH”).

The hearing on that appeal was held in accordance with 10 NYCRR §415. At the hearing, the Facility had the burden of proving that the discharge is necessary and the discharge plan is appropriate (10 NYCRR §415.3(h)(2)(iii)).

This hearing was digitally recorded and transferred to a compact disc (“CD”); the CD has become a part of the record. Appellant testified on her own behalf. The following Facility representatives testified for Respondent: Carol Trumpatori–Medicaid Coordinator, Jason Meyer–

Nurse Practitioner, Robert Nemeth, R.N.–Director of Nursing, Karim Nensey–Director of Rehabilitation, Margaret Berger–Social Worker, and Lucille Preziotti–Director of Social Work. Also present at the hearing were Piera Hemmings, R.N.–Unit Manager, and Gail Switala of the Ombudsman’s office.

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

ALJ:

- I: Notice of Hearing and accompanying documents including the Facility’s Transfer/Discharge Notice

Facility:

- 1: Physician note regarding discharge
- 2: Nursing notes
- 3: Social Services Care Plan Activity Report
- 4: █/17 NAMI Medicaid budget letter from DSS
- 5: Facility bill
- 6: █/16 NAMI Medicaid budget letter from DSS

Appellant was given the opportunity but did not offer any documents into evidence.

**ISSUE**

Has Medford Multicare Center established that the discharge 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, Medford Multicare Center, is a residential health care facility located in Medford, New York. (Ex I)

2. Appellant, ██████████, age ██████ was admitted to the Facility in ██████████ 2015.

Appellant is independent in her activities of daily living (“ADLs”). She goes out on pass independently on public transportation, and in conjunction with ‘█████████’ from the Facility, schedules her own medical appointments in the community. (Ex 6; T Nemeth, Preziotti, Appellant)

3. By notice dated ██████████ 2017, Respondent advised Appellant that it had determined to discharge her on the grounds of failure, after reasonable and appropriate notice, to pay (or have paid under Medicare, Medicaid, or private insurance) for her stay at the Facility. (Ex I)

4. An outstanding balance of ██████████ was owed to the Facility as of the date of the hearing, ██████████ 2017. (Ex 5; T Trumpatori)

5. Respondent’s discharge plan, which was approved by the Facility’s physician, is to transfer Appellant to approved emergency housing provided by ██████████ (“DSS emergency housing”). The Facility will refer Appellant for services with a Certified Home Health Agency, and Appellant will continue to work with a SILO service coordinator to secure permanent housing in the community. The Facility will provide Appellant with prescriptions for medications, a wheelchair, walkers, and ██████████ Appellant is currently working on securing an apartment that is expected to be available in approximately ██████████ 2018. (Ex 1; T Berger, Preziotti, Meyer, Nemeth, Nensey, Appellant)

6. Appellant has remained at Medford Multicare Center pending the outcome of this proceeding.

### DISCUSSION

Respondent's plan to discharge Appellant pursuant to 10 NYCRR §415.3(h)(1)(i)(b) is based on Appellant's failure to pay the Facility for her stay, despite attempts by the Facility to collect the accumulating amounts. It is the Resident's responsibility and obligation to pay for her stay at the Facility. Appellant has failed, after reasonable and appropriate notice, to pay for her stay at the facility.

The additional issue to be determined at this hearing is whether the discharge plan and location, to wit, discharge to DSS emergency housing, is appropriate. Appellant is independent in all her ADLs and she is capable of managing her medications and medical needs, including following up on maintenance rehabilitation therapy if needed, in the community. At the time of the hearing, Appellant's dental needs were being treated at the Facility by Dr. DeLuca. There was testimony that the dental work already in progress for Appellant's █ had to be completed at the Facility. Respondent agreed to allow Appellant to remain at the Facility until that █ dental work was complete.

The home where Appellant resided prior to admission to the Facility is no longer available. Appellant, who was not initially cooperating with discharge planning, agrees that she is ready for independent living. Appellant has been accepted into the SILO program, and she has been actively pursuing apartments in the community since █ 2017. Appellant was attempting to view an apartment in the community the day after the hearing.

A conference call was scheduled for the week after the hearing to discuss the status of the ongoing dental work and Appellant's progress in securing housing in the community. Conference calls were held on November 6, 9, 16 and 27, and December 1, 2017. During that one-month timeframe, Appellant visited apartments and received planned and emergency dental

██████/Medford

work at both the Facility and ████████████████████. It appears that Appellant has secured an apartment that will be available in approximately ██████████ 2018. It was reported on the December 1, 2017 conference call that Dr. DeLuca completed the ██████████ dental work on ██████████ and that he would not be returning to the Facility to treat Appellant's dental issues in her ██████████. Any additional dental work would be addressed in the community.

Failure to pay is an explicitly authorized reason for discharge. I find that Respondent has met the requirements of 10 NYCRR §415.3(h)(1)(i)(b) and proven that Appellant has failed, after reasonable and appropriate notice, to pay for her stay at the facility. Respondent has also met its obligation to provide a safe and appropriate discharge plan; discharge to DSS emergency housing is an appropriate discharge plan. SILO will continue to work with Appellant while she is residing in emergency housing.

**DECISION**

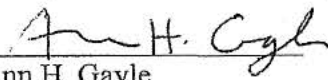
I find that Respondent has proven by substantial evidence that the discharge is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent, Medford Multicare Center, is authorized to discharge Appellant in accordance with the ██████████, 2017 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  
December 4, 2017

  
Ann H. Gayle  
Administrative Law Judge

██████/Medford

TO:

██████████  
Medford Multicare Center  
3115 Horseblock Road  
Medford, New York 11763

Lucille Preziotti, Director of Social Work  
Medford Multicare Center  
3115 Horseblock Road  
Medford, New York 11763

Barbara Phair, Esq.  
Abrams, Fensterman  
3 Dakota Drive, Suite 300  
Lake Success, New York 11042