



Department of Health

ANDREW M. CUOMO
Governor

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

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

July 20, 2018

CERTIFIED EMAIL/RETURN RECEIPT

Maryann Kane, Director of Social Work
The Riverside Premier
Rehabilitation & Healing
150 Riverside Drive
New York, New York 10024
mkane@theriverrehab.com

██████████ Resident
C/o The Riverside Premier
Rehabilitation & Healing
150 Riverside Drive
New York, New York 10024
HAND DELIVER

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 /CAC
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
cc: Donna M. Fagan
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

COPY

In the Matter of [REDACTED]
The Riverside Premier Rehabilitation & Healing
Center

Memorialization of Settlement &
Administrative Law Judge's Order

Appeal from a Nursing Home Resident
Discharge pursuant to Title 10 NYCRR
§415.3(h)

Before: Administrative Law Judge ("ALJ") Kimberly A. O'Brien

For: The Riverside Premier Rehabilitation & Healing
Center ("Facility"): Maryann Kane, Director of Social Work

For: Resident [REDACTED] ("Resident" or "Appellant"): *Pro Se*

The Facility [REDACTED] 2018 Discharge Notice [ALJ Exhibit I] proposed to discharge the Appellant on [REDACTED] 2018 on the grounds that the Appellant's condition improved sufficiently so that he no longer requires care in a nursing home. The Facility proposed discharge to his home in [REDACTED] where the Appellant had resided prior to his admission to the Facility. The Appellant requested a hearing to challenge the timing of the discharge and that hearing was scheduled to take place at the Facility on July 6, 2018. Subsequently, the Appellant requested a brief adjournment indicating that his attorney was out of town, but the hearing could proceed "any day after [REDACTED], 2018" [ALJ Exhibit 2]. James Horan, ALJ, who was originally assigned this matter granted the adjournment. The matter was reassigned to the ALJ and a hearing was scheduled to take place at the Facility on July 16, 2018.

Under Title 10 NYCRR § 415.3(h), a nursing home resident holds certain rights regarding transfer or discharge. Title 10 NYCRR § 415.3(h)(1)(i)(2) allows involuntary discharge if a resident's health has improved sufficiently so that the resident no longer requires the services that

the facility provides. Under the standards at 10 NYCRR § 415.2(k), a nursing home provides nursing and professional services twenty-four hours per day for patients who require those services, but do not require services in a general hospital. In effect, this proceeding acts as a stay on any discharge, until the decision on the discharge appeal. If a decision approves the discharge grounds and discharge plan, the proceeding ends with the decision and the discharge may proceed according to the discharge plan.

On July 16, 2018, the ALJ appeared at the Facility and conducted an extensive prehearing discussion. The Appellant did not have counsel present and indicated that he told his counsel not to appear in person or by one of his associates. The Appellant expressed that he was in the process of appealing his insurance company's denial of coverage ("insurance denial appeal"). The ALJ made it clear that this appeal was separate and apart from the insurance denial. It was clear to all that the insurance denial appeal would take some time, Appellant indicated that his attorney would assist him when he returned to the community. The Facility proposed to discharge the Appellant to his home or his friends home with a referral to a home health agency that would make an assessment about his post discharge needs [Rec. 3:04 - 3:22]. After the ALJ asked the Appellant what the Appellant wished the hearing's outcome to be, the Appellant indicated that he wished to leave the Facility, but he indicated that he would need a few days. The Appellant agreed to withdraw his appeal if he could remain at the Facility while he made arrangements for someone to pick him up and take him home or to his friend's home. The parties arrived at a settlement ("settlement"). The ALJ made a digital audio recording of the settlement where the parties' affirmed under oath that they agreed to the settlement [Rec.01-3:37]. The Facility agreed to allow the Appellant to remain at the Facility until [REDACTED] 2018, at 11:00am [Rec.

2:40]. The Appellant agreed to leave at or before the designated discharge time and date [Rec.1:33; 2:21; 2:51].

On the morning of [REDACTED], 2018, Donna Fagan, CRB, notified the ALJ that she spoke with the Resident and he is appealing his discharge because his insurance denial appeal is moving forward. The ALJ received the following documents into the record post settlement:

ALJ Exhibit 1	Original Notice of Hearing & [REDACTED] 18 Discharge Notice,
ALJ Exhibit 2	[REDACTED] 018 Letter from Appellant
ALJ Exhibit 3	[REDACTED] 2018 Discharge Notice.

ALJ Exhibits 1-3 are attached to this Memorialization of Settlement & Order.

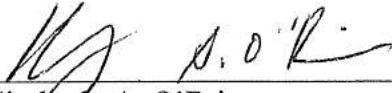
On July 16, 2018 the parties reached a settlement which was recorded by the ALJ. The Facility issued a [REDACTED] 2018 discharge notice memorializing the settlement, which the Appellant signed. Appellant agreed to the terms contained in the [REDACTED] discharge and there is no indication that his health or his circumstances have changed. The Appellant's July 19, 2018 appeal of the [REDACTED] discharge notice on the basis that he is moving forward with his insurance denial appeal is not sustained.

ORDER

NOW; after considering the request for Hearing, the testimony and the documents in evidence and the Agreement between the parties, the ALJ issues the following Order:


1. The Facility may discharge the Appellant on or after [REDACTED] 2018.
2. The Facility may discharge the Appellant to his home or his friend's home, pursuant to the Appellant's choice.

Dated: Menands, New York
July 19, 2018



Kimberly A. O'Brien
Administrative Law Judge

To: Maryann Kane, Director of Social Work
The Riverside Premier Rehabilitation & Healing
150 Riverside Drive
New York, New York 10024

 Resident
The Riverside Premier Rehabilitation & Healing
150 Riverside Drive
New York, New York 10024



**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 18, 2018

CERTIFIED MAIL/RETURN RECEIPT

Tara Diamond, LMSW
The Riverside Premier
150 Riverside Dr.
Rehabilitation and Healing Center
New York, New York 10024

[REDACTED]
C/o The Riverside Premier
150 Riverside Dr.
Rehabilitation and Healing Center
New York 10024

RE: In the Matter of [REDACTED] Discharge Appeal

Dear Parties:

Enclosed please find a copy of the Notice of Hearing in the above referenced matter. This hearing is being held pursuant to the request of the Appellant, [REDACTED]

Administrative Law Judge James F. Horan has been assigned to this matter.

Please fill out the enclosed "Notice of Appearance" sheet and bring it with you to the hearing and give it to the Administrative Law Judge per Section 166 of the Executive Law.

If you have any questions, please contact me at (518) 402-0748.

Requests for adjournments must be made in writing to the Administrative Law Judge's Office, NYS Department of Health, Riverview Center, 150 Broadway, Suite 510, Albany, New York 12204 and by telephone at (518) 402-0748 at least three (3) days prior to the scheduled hearing date.

Sincerely,

James F. Horan /CAC
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cac
Enclosures

