



**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 19, 2018

CERTIFIED MAIL/RETURN RECEIPT

Michael Hurtes, Acting Administrator
The Grand Rehabilitation &
Nursing at River Valley
140 Main Street
Poughkeepsie, New York 12601

[REDACTED]
C/o The Grand Rehabilitation &
Nursing at River Valley
140 Main Street
Poughkeepsie, New York 12601

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

JFH: cac
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

COPY

In the Matter of

██████████ The Grand Rehabilitation &
Nursing at River Valley

Administrative Law Judge's Decision

Appeal from a Nursing Home Resident Involuntary Discharge pursuant to Title 10 (Health) of the Official Codes, Rules and Regulations of the State of New York (NYCRR) §415.3(h)

A "Transfer and Discharge Notice" ("Discharge Notice"), date ██████████ 2018, was issued to ██████████ ("Resident") by The Grand Rehabilitation & Nursing at River Valley ("Facility"). The Resident appealed the Facility's proposed transfer/discharge. The pre-transfer Hearing was held on July 2, 2018, at the Facility, 140 Main Street, Poughkeepsie, New York, before Kimberly A. O'Brien, Esq., Administrative Law Judge ("ALJ").

The Facility appeared by Michael Hurtes, Acting Administrator. The Resident appeared in person and spoke on his own behalf. 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 United States Code of Federal Regulations ("CFR") 42 CFR Subpart E (§§431.200 - 431.246) and 42 CFR Part 483; the New York State Administrative Procedure Act; and 10 NYCRR Part 51.

The following individuals were present at the hearing: Stephanie McClain, Social Worker; Teresa Dirac, Director of Nursing Services; Morgan Carson, Nurse; Michael Hurtes, Acting Administrator; Theresa Norbom, Certified Ombudsman; and Resident. Evidence was received, witnesses were sworn or affirmed and examined. An audio recording of the hearing was made. The documentary evidence includes: ALJ Ex. 1- Notice of Hearing & ██████████ 18 Notice of Transfer/Discharge, and ██████████ 18 Facility Discharge Summary; ALJ Ex. 2 - Letter from Resident's

[REDACTED]; and Ex. 1- Resident Care Plan. The Resident was provided with a copy of the documentary evidence.

STATEMENT OF THE CASE

The Resident's health has improved sufficiently so that he no longer needs services provided by this facility. The Facility proposes to discharge the Resident from the Facility to [REDACTED] an assisted living facility in [REDACTED] ALJ Ex. 1]. The Resident is aware of the Facility's assertions and appealed his discharge.

FINDINGS OF FACT

The following findings of fact were made after a review of the entire record in this matter. Citations in brackets refer to exhibits [Ex.]. 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, a [REDACTED]-year-old male, has been a resident at the Facility for approximately [REDACTED] years. He was admitted to the Facility in [REDACTED] 2007, and on [REDACTED] 2010 he was discharged and readmitted [REDACTED] days later, on [REDACTED] 2010 [ALJ Ex. 1; Ex. 1].

2. The Resident is articulate, oriented and he can make his needs known. The Resident is wheelchair bound, after [REDACTED] and he has [REDACTED] pain. The Resident's diagnoses include [REDACTED] [REDACTED] Ex. 1; ALJ Ex. 2].

DISCUSSION & CONCLUSIONS

The Facility proposes to involuntarily discharge the Resident to a lower level of care, alleging that the Resident's discharge is permissible because the Resident's health has improved

¹ The letter from the Resident's [REDACTED] was received and considered by the ALJ post hearing. It has been marked as ALJ Ex. 2 and is attached to this decision.

sufficiently so that he no longer needs the services provided by the Facility, 10 NYCRR § 415(h)(1)(i)(a)(2). Under the hearing procedures at §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge is necessary and the discharge plan is appropriate. Under SAPA § 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or fact; less than preponderant evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 (3rd Dept. 1984), appeal dismissed 63 N.Y.2d 649.

Nurse Dirac testified that the Resident is independent with his activities of daily living and has no skilled needs. Ms. McClain, Social Worker, testified that even though the Resident has a number of [REDACTED] conditions, [REDACTED] can monitor him and secure treatment when necessary. The ALJ could not ignore that the Resident has lived at the Facility for approximately [REDACTED] years and he has a number of [REDACTED] conditions which require him to have more monitoring and assistance not less. Among other things, the care plan states the Resident has impaired [REDACTED] and is at risk for falls due to [REDACTED] medication regimen; he requires [REDACTED] monitoring and prompting to take his medications; and he has experienced [REDACTED] due to [REDACTED] related to the [REDACTED] of [REDACTED]. The Resident has recently experienced unexplained weight loss [REDACTED] pounds. While Nurse Dirac suggested the Resident was trying to lose weight, the care plan suggests otherwise. The Resident's weight loss, along with his medications regimen and [REDACTED] [REDACTED] require that the Facility closely monitor his fluid and food intake, and [REDACTED] he has been put on a daily regimen of nutritional supplements.

The Resident testified that he does not wish to leave the Facility because his condition is only getting worse, and he needs the services the Facility provides. The Resident's [REDACTED] sent a letter to the ALJ that outlined the issues and concerns both she and he [REDACTED] have about the proposed discharge. In the letter she expressed [REDACTED]" about how at this point the Facility could determine "that his medical condition has improved to the point that the Resident no longer requires long term care" when he has [REDACTED] illnesses [ALJ 2 at p.2].

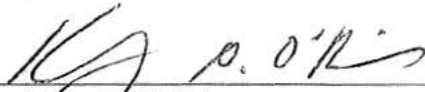
Before the hearing commenced, there was a prehearing discussion about the Resident's condition and needs. The Facility provided copies of a document it intended to present at hearing, but when its meaning and relevance could not be explained, the Administrator left the room and returned with copies of the Resident's care plan [Ex 1]. The care plan shows the Resident's condition continues to decline and he requires round the clock supervision, assistance and monitoring. The Facility has failed to prove the Resident no longer requires its services.

ORDER

NOW; after considering the request for hearing, the testimony and the documents in evidence, the ALJ issues the following Order:

1. The ALJ upholds that the Resident's appeal from the [REDACTED] 2018 Discharge Notice.
2. The ALJ dismisses the [REDACTED] 2018 Discharge Notice.

Dated: Menands, New York
July 19, 2018



Kimberly A. O'Brien
Administrative Law Judge

To: [REDACTED] Resident

C/o The Grand Rehabilitation & Nursing at River Valley
140 Main Street
Poughkeepsie, NY 12601

Michael Hurtes, Acting Administrator
The Grand Rehabilitation & Nursing at River Valley
140 Main Street
Poughkeepsie, NY 12601