



# 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

February 10, 2017

## CERTIFIED MAIL/RETURN RECEIPT

Vernita Ford, DNS  
Chapin Home  
165 01 Chapin Parkway  
Jamaica, New York 11432

Tiffany Kiss, LCSW  
Zucker Hospital  
75-59 263<sup>rd</sup> Street  
Glen Oaks, New York 11004



**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:nm  
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

-----X  
 In the Matter of an Appeal, pursuant to :  
 10 NYCRR § 415.3, by :  
 :  
 [REDACTED] :  
 :  
 Appellant, :  
 :  
 from a determination by :  
 :  
 CHAPIN HOME FOR THE AGING, :  
 :  
 Respondent, :  
 :  
 to discharge her from a residential health :  
 facility :  
 -----X

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DECISION AND ORDER

On [REDACTED] [REDACTED] 2016, Chapin Home for the Aging ("the Facility") transferred [REDACTED] ("the Resident") to Zucker Hillside Hospital ("the Hospital") because of behavior which could not be managed in spite of intervention. The Hospital admitted the Resident and provided [REDACTED] treatment. When the Hospital determined that the Resident was able to return to the Facility, the Facility refused to readmit her. The Resident's [REDACTED] and the Hospital's social worker contacted the New York State Health Department's hotline to request the commencement of this appeal. On February 7, 2017, a hearing on the appeal was held before William J. Lynch, Esq., Administrative Law Judge.

The hearing was held in accordance with the Public Health Law of the State of New York; Part 415 of Volume 10 of the Official

Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR"); Part 483 of the United States Code of Federal Regulations ("CFR"); the New York State Administrative Procedure Act ("SAPA"); and 10 NYCRR Part 51.

The hearing was held at the Hospital. Evidence was received, witnesses were sworn or affirmed and examined. An audio recording of the proceedings was made. At the conclusion of the testimony, a decision and order was made on the record requiring the Facility to readmit the Resident. This written decision confirms the oral decision and order made on February 7, 2016.

#### ISSUES

The issues to be determined in this proceeding are whether the Facility's discharge of the Resident was necessary and the discharge plan was appropriate. The Facility has the burden of proof and must prove its reasons by substantial evidence. (§ 415.3[h][2][iii], SAPA §306[1]).

#### 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 testimony or exhibits. These citations represent evidence found

persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. The Resident was admitted to the Facility on [REDACTED] 2012. She is [REDACTED] years of age and has [REDACTED]. She resided on a unit at the Facility which cared for the [REDACTED] residents and which had specially trained staff and precautions to prevent residents from wandering off the unit. (Recording @ 13:35).

2. The Facility transferred the Resident to the Hospital on [REDACTED] 2016, due to incidents of [REDACTED] in spite of the Facility's interventions to manage her behavior. (Recording @ 7:54).

3. The Facility expected that the Resident would return because the Hospital does not provide long term care. (Recording @ 11:20, 21:00).

4. The Resident replicated her pattern of behavior during the initial period of her hospitalization. The Hospital attempted the use of different medications and combinations of medications to treat the Resident. A medication first administered in late December produced a notable improvement in the Resident's behavior. (Recording @ 20:30).

5. The Hospital informed the Facility that the Resident's behavior had improved dramatically and that the improvement had been sustained. (Recording @ 11:45, 30:00).

6. The Facility refused the Hospital's request to refer the Resident back to the Facility. (Recording @ 25:20).

7. The Hospital made repeated efforts to engage the Facility in a dialogue, but the Facility refused and claimed that it was unable to meet the Resident's needs. (recording @ 49:15, 52:45).

8. The Facility did not provide the Resident or her designated representative with a discharge notice advising her of her right to appeal its determination. (Recording @ 5:00).

#### ANALYSIS AND CONCLUSIONS

Before a facility discharges a resident, it must notify the resident and the resident's designated representative of the discharge and the reasons for the move in writing (10 NYCRR 415.3[h][1][iii]). In this instance, the Facility claimed that it issued a notice in [REDACTED] 2016, when it transferred the resident temporarily to the Hospital, but the Facility admitted that it never issued a notice which advised her of her right to appeal that determination. Therefore, the notice issued by the Facility failed to comply with 10 NYCRR 415.3[h][1][v], which sets forth

the items which must be included in the written notice. Moreover, the mutual understanding when the Resident was admitted to the Hospital was that the Facility would allow her to return. When the Facility decided in [REDACTED] 2017, to refuse the Resident's referral back from the Hospital, the Facility provided no written notice whatsoever of that determination to the Resident or her designated representative.

At the hearing, the Facility alleged that the Appellant's discharge was permissible because the Facility was unable to meet the Resident's needs and the Resident posed a safety risk to the other residents. The Facility claimed that its refusal to allow the Resident to return to the Facility was based on the Hospital's records which indicated a behavioral incident which had occurred on [REDACTED], 2016, and the Facility's unwillingness to believe the Hospital's claim that the Resident's behavior was improved while she was taking a single medication.

A [REDACTED] at the Hospital offered testimony related to the Resident's course of treatment and significant progress at the Hospital. Social workers at the Hospital testified regarding the efforts made to have the Resident referred back to the Facility and the Facility's unwillingness to even engage in a dialogue about accepting the Resident back. This testimony established that the

Resident's behavior had improved dramatically, that the improvement had been sustained for several weeks, and that the Facility had refused to accept the Resident back to the Facility in spite of this sustained improvement.


As such, the Facility failed to meet its burden of establishing its claim that it was unable to meet the Resident's needs or that she posed a safety risk to the other residents.

**DECISION AND ORDER**

1. The Facility shall readmit the Resident. If a bed is not currently available, Respondent shall admit the Resident to the first appropriate bed before admitting any other person;

2. This Decision confirms the oral decision made on the record on February 7, 2017.

DATED: Menands, New York  
February 10, 2017

  
WILLIAM J. LYNCH  
Administrative Law Judge