



# 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 12, 2018

**CERTIFIED EMAIL/RETURN RECEIPT**

Liana Rutenberg-Diaz  
Fordham Nursing & Rehab Center  
2678 Kingsbridge Terrace  
Bronx, New York 10463

[REDACTED]  
Fordham Nursing & Rehab Center  
2678 Kingsbridge Terrace  
Bronx, New York 10463

**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: cac  
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

COPY

In the Matter of  
[REDACTED] Fordham Nursing & Rehab Center

Memorialization of Settlement and  
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) James F. Horan

For: The Fordham Nursing & Rehab  
Center (Facility):

Liana Rutenberg-Diaz, Licensed Nursing Home  
Administrator

For: Resident [REDACTED] (Appellant):

*Pro Se*

In this matter in which the Facility proposes to discharge the Appellant nursing home resident involuntarily, the Appellant and the Facility have agreed that the Respondent may remain in the Facility until a discharge date on [REDACTED] 2017.

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 the [REDACTED]

[REDACTED]. The Appellant had resided in [REDACTED] Housing prior to his admission to the Facility. The Appellant then requested a hearing to challenge the timing of the discharge and that hearing took place at the Facility in Bronx County on June 28, 2018.

Under Title 10 NYCRR § 415.3(h), a nursing home resident holds certain rights in regard to 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.

At the hearing, the Facility presented witnesses from its Social Work, Therapy and Medical Departments, who testified that the Appellant had completed therapy at the Facility and was ready for discharge back to [REDACTED]. The ALJ received the following documents into the record:

ALJ Exhibit I	Notice of Hearing,
Facility Exhibit 1	Discharge Transfer Notice,
Facility Exhibit 2	Physician Discharge Summary,
Facility Exhibit 3	Social Work Summary.

The record also included a digital audio recording from the hearing.

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 and return [REDACTED] Housing, but he indicated that he was not ready to leave yet by [REDACTED] 2018, the date he received the Facility's Discharge Notice. The Appellant felt he needed an additional month from the proposed discharge date. The Appellant then requested to remain in the Facility until [REDACTED] 2018 [Hearing digital recording at 23 minutes 28 seconds to 23 minutes and 44 seconds. The Facility agreed to move the discharge date to [REDACTED] 2018 (Agreement).

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 Appellant may remain in the Facility through [REDACTED] 2018.
2. The Facility may discharge the Appellant [REDACTED] pursuant to the original discharge plan, as of [REDACTED] 2018.

Dated: Menands, New York  
July 12, 2018



James F. Horan  
Administrative Law Judge

To: Liana Rutenberg-Diaz  
Licensed Nursing Home Administrator  
Fordham Nursing & Rehab Center  
2678 Kingsbridge Terrace  
Bronx, NY 10463

 Resident  
c/o Fordham Nursing & Rehab Center  
2678 Kingsbridge Terrace  
Bronx, NY 10463