



Department  
of Health

ANDREW M. CUOMO  
Governor

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

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

August 15, 2018

**CERTIFIED MAIL/RETURN RECEIPT**

Roy Ramnanan, Hospital Case Manager  
Jacobi Medical Center  
1400 Pelham Pkwy South  
Bronx, New York 10461

Lowell Feldman, NHA  
Grand Manor Nursing and Rehab. Center  
700 White Plains Road  
Bronx, New York 10473

[REDACTED]  
c/o Jacobi Medical Center  
1400 Pelham Pkwy South  
Bronx, New York 10461

Patrick J. Brennan, Esq.  
61 Broadway, 26<sup>th</sup> Floor  
New York, New York 10006

**PLEASE HAND DELIVER**

Eve Green Koopersmith, Esq.  
111 Great Neck Road  
Great Neck, New York 11021

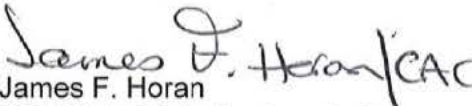
**RE: In the Matter of [REDACTED] - Discharge Appeal**

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

In the Matter of an Appeal, pursuant to  
10 NYCRR § 415.3, by

[REDACTED]

Appellant,

from a determination by

GRAND MANOR NURSING AND  
REHABILITATION CENTER,

Respondent,

to discharge her from a residential  
healthcare facility

ORIGINAL

DECISION  
AND ORDER

-----X  
On [REDACTED] 2018, Grand Manor Nursing and Rehabilitation  
Center ("the Facility") transferred [REDACTED] ("the  
Resident") to [REDACTED] ("the Hospital") for a  
[REDACTED] evaluation. The Resident was evaluated at the Hospital  
and cleared for return to the Facility. The Facility, however,  
refused to readmit the Resident. On [REDACTED] 2018, a social worker  
at the Hospital contacted the New York State Health Department's  
hotline on the Resident's behalf to request the commencement of  
this appeal. On August 10, 2018, 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. The following individuals were present for the hearing: [REDACTED] Resident; Eve Green Koopersmith, Facility attorney; Lowell S. Feldman, Facility Administrator; Bradley Liebman, Facility Assistant Administrator; Christine Abrigo, R.N., Facility Director of Nursing; Fanny Fernandez, Facility Director of Social Work; Patrick J. Brennan, Hospital attorney; Kaitlin Drummond, Hospital attorney; Colin Cha Fong, M.D., Hospital physician; Dimitrios Mellos, Ph.D., Hospital psychologist; Roy Ramnanan, Hospital Director of Care Management.

At the conclusion of the hearing, I rendered an oral decision and order on the record, requiring the Facility to readmit the Resident. Although the Resident had stated earlier during the hearing that she wanted to return to the Facility, she then stated that she wanted to go to a different nursing home or adult home. The Hospital and the Facility agreed to verify whether such an option was available. However, my order remains that the Facility may not refuse to readmit the Resident. This written decision confirms the oral decision and order made on August 10, 2018.

### ISSUES

The issue to be determined in this proceeding is whether the Facility must readmit the Resident from the Hospital. The Facility has the burden of proof and must prove its case by substantial evidence. (10 NYCRR § 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 Facility issued a discharge notice on [REDACTED] 2018, which stated that the Facility would discharge the Resident to the [REDACTED] Shelter at [REDACTED] ("Shelter") on [REDACTED] 2018; however, the Facility did not discharge the Resident to the Shelter. (Recording @ 47:05, 56:20, 1:04:00; Facility Ex. 1).

2. On [REDACTED] 2018, the Facility transferred the Resident to the Hospital for a [REDACTED]. (Recording @ 33:40).

3. On [REDACTED] 2018, the Hospital attempted to send the Resident back to the Facility by ambulance because she was [REDACTED] and medically stable. The Resident has [REDACTED]

medical conditions which were not acute, and there was no reason for her to remain in an acute care hospital. (Recording @ 1:27:50; 1:43:10).

4. The Facility refused to readmit the Resident and told the Hospital that the Resident had no right to return because she had already been discharged. (Recording @ 1:03:20).

#### ANALYSIS AND CONCLUSIONS

The Facility issued a discharge notice to the Resident on [REDACTED], 2018, which stated that the Facility would discharge the Resident to the Shelter. The Resident did not appeal the notice, yet the Facility did not discharge the Resident. On [REDACTED] 2018, the Facility sent the Resident to the Hospital for a [REDACTED] evaluation. When the Hospital determined that the Resident did not require hospitalization and returned the Resident to the Facility, the Facility refused to readmit the Resident claiming the Resident had already been discharged.

The Facility contended that the Resident had no right to return to the Facility because her time to appeal the discharge notice had expired and she had not requested an appeal of the proposed discharge plan. This argument is without merit because the Facility never discharged the Resident to the Shelter in accordance with the plan of its interdisciplinary care team. When the Hospital determined that the Resident did not require

admission, the Facility was required to cooperate with arrangements for the Resident's prompt return.

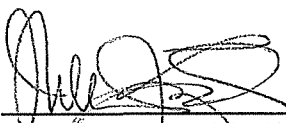
Having considered the entire record, I find that the Facility failed to establish a basis for its refusal to readmit the Resident from the Hospital.

DECISION AND ORDER

1. This Decision confirms the oral decision made on the record on August 10, 2018, requiring the Facility to readmit the Resident;

2. 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: Menands, New York  
August 15, 2018

  
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WILLIAM J. LYNCH  
Administrative Law Judge