

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan
SAPA File
BOA by scan



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

April 15, 2020

CERTIFIED MAIL/RETURN RECEIPT AND EMAIL

Veronica Volpe
Staten Island University Hospital
475 Seaview Avenue
Staten Island, New York 10305

██████████
c/o Staten Island University Hospital
475 Seaview Avenue
Staten Island, New York 10305

Barbara Phair, Esq.
Abrams, Fensterman, Fensterman, Eisman,
Formato, Ferrara, Wolf & Carrone, LLP
3 Dakota Drive, Suite 300
Lake Success, New York 11042

Mary James, SW
Golden Gate Rehabilitation and Nursing
191 Bradley Avenue
Staten Island, New York 10314

██████████
██████████
██████████

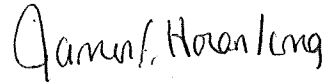
RE: In the Matter of ██████████ – Discharge Appeal

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,

A handwritten signature in black ink that reads "James F. Horan" followed by a stylized flourish.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
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

**Golden Gate Rehabilitation
and Health Care Center**

Respondent,

to discharge him from a residential
health care facility.

COPY

**DECISION
AND
ORDER**

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: Cisco WebEx videoconference

Hearing Date: April 13, 2020

Parties: Golden Gate Rehabilitation and Health Care Center
By: Barbara Phair, Esq.
Abrams, Fensterman, Fensterman, Eisman,
Formato, Ferrara, Wolf & Carrone, LLP
3 Dakota Drive, Suite 300
Lake Success, New York 11042

By: [REDACTED]

JURISDICTION

Golden Gate Rehabilitation and Health Care Center (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge (the Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

Facility witnesses: Mary James, Director of Social Services

Facility exhibits: None

Appellant witnesses: , Appellant's
Veronica Volpe, RN, Assistant Director of Case Management,
Staten Island University Hospital (SIUH)

Appellant exhibits: A-D

ALJ exhibits: I-IV

A transcript of the hearing was made.

ISSUES

Has Golden Gate Rehabilitation and Health Care Center established that its determination to discharge the Appellant was correct and that its discharge plan was appropriate?

FINDINGS OF FACT

1. The Appellant is a -year-old male who was admitted to the Facility in or about 2019 as a long-term care resident.
2. The Appellant is diagnosed with , and which have triggered . However, he is also bedbound. (Exhibits 4 and D.)

██████████/Golden Gate Rehabilitation and Health Care Center

3. On ██████████, 2020, Facility staff arranged for the Appellant's transportation to SIUH for treatment of a ██████████ and ██████████ (██████████). While at SIUH later that evening, SIUH staff determined that the Appellant's conditions were stable and that he was able to be returned to the Facility. (Exhibits 4 and D.)
4. SIUH staff have attempted to effectuate the Appellant's return to the Facility since ██████████, 2020 but were repeatedly advised that the Facility would not allow the Appellant to return. (Exhibits 4 and D.)
5. Before the transfer to SIUH, the Facility did not advise the Appellant's ██████████ (his designated representative) that he was being discharged and failed to provide her with a discharge plan for the Appellant.
6. On ██████████, 2020, SIUH staff requested this hearing on the Appellant's behalf to contest the Facility's continued refusal to readmit the Appellant. (Exhibit IV.)
7. By notice dated ██████████, 2020, the Facility advised the Appellant's ██████████ of its determination to discharge the Appellant to SIUH because his needs cannot be met by the Facility and "because the health and/or safety of individuals in the facility would otherwise be endangered. As per hospital documentations [sic], Mr. ██████████ is a danger to self and others." (Exhibit B.)
8. The Appellant has neither a medical nor psychiatric need for continued hospitalization. He has remained at SIUH throughout the novel coronavirus (COVID-19) pandemic and moved to different units throughout his stay to accommodate patients diagnosed with COVID-19. (Exhibits 4 and D.)

9. A hearing was held on April 13, 2020, during which the Facility was verbally directed to readmit the Appellant to the next available semi-private bed. This written decision is the final administrative determination regarding the appeal.

APPLICABLE LAW

A residential health care facility (also referred to in the regulations as a nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. PHL §§ 2801(2)-(3); 10 NYCRR § 415.2(k).

Department regulations at 10 NYCRR § 415.3(i)(1)(i) describe the permissible bases upon which a residential health care facility may transfer or discharge a resident. The residential health care facility must notify the resident and a designated representative, if any, of the transfer or discharge and the reasons for the move in writing. Such notice must be provided no later than the date on which a determination was made to transfer or discharge the resident. 10 NYCRR §§ 415.3(i)(1)(iii)-(iv).

The residential health care facility must prove by substantial evidence that the discharge was necessary, and the discharge plan was appropriate. 10 NYCRR § 415.3(i)(2)(iii); State Administrative Procedure Act § 306(1).

DISCUSSION

On [REDACTED], 2020, the Appellant was transported to SIUH for a [REDACTED] and [REDACTED]. Although his condition stabilized that evening and psychiatric staff determined that he had no need for hospitalization, the Facility continuously refused to allow the Appellant to return. The Facility failed to advise the Appellant's designated representative in writing of the Appellant's discharge, and the reasons why he was being discharged, as required by 10 NYCRR § 415.3(i)(1)(iii). The [REDACTED] discharge notice, created more than two months after the

Appellant's transfer and after this hearing was requested, fails to comport with those requirements.


Furthermore, the Appellant's discharge to SIUH, an acute care hospital, is not an appropriate discharge plan. This is not a policy change. In a Dear Administrator Letter dated September 23, 2015 (DAL NH 15-06), the Department reminded residential health care facilities that hospitals are not considered final discharge locations for residents with episodes of acting out behavior who are sent to hospitals for treatment. On March 25, 2020, they were again advised of their obligation to expeditiously accept all hospitalized residents deemed medically stable for return, this time due to the urgent need to expand hospital capacity in New York State for treatment of COVID-19 patients requiring acute care. NYS DOH Advisory: Hospital Discharges and Admissions to Nursing Homes, https://coronavirus.health.ny.gov/system/files/documents/2020/03/doh_covid19-nhadmissionsreadmissions_-032520.pdf. The Appellant has been occupying an SIUH hospital bed for no medical reason throughout this pandemic. The Facility's determination fails to comport with regulatory requirements and is not sustained.

DECISION AND ORDER

Golden Gate Rehabilitation and Health Care Center has not established that its determination to discharge the Appellant was correct and that the discharge plan was appropriate.

Golden Gate Rehabilitation and Health Care is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the facility, pursuant to 10 NYCRR § 415.3(i)(2)(i)(d).

Dated: April 14, 2020
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge