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## Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Commissioner

**JOHANNE E. MORNE, M.S.**  
Acting Executive Deputy Commissioner

January 16, 2024

### CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
c/o The Grand at Guilderland  
428 State Route 146  
Guilderland, New York 12009

Gloria Murray, Ombudsman Coordinator  
Long Term Care Ombudsman Program  
Catholic Charities Tri-County Services  
1462 Erie Boulevard, 2<sup>nd</sup> Floor  
Schenectady, New York 12305

Nyoki Tate, NHA  
The Grand at Guilderland  
428 State Route 146  
Guilderland, New York 12009

Barbara Phair, Esq.  
Abrams Fensterman, LLP  
3 Dakota Drive, Suite 300  
Lake Success, New York 11042

**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,

Natalie J. Bordeaux  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB:  
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

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

██████████ ██████████

Appellant,

from a determination by

THE GRAND AT GUILDERLAND

Respondent,

to discharge him from a residential health  
care facility.

COPY

DECISION

Hearing Before: Matthew C. Hall  
Administrative Law Judge

Held via WEBEX Videoconference

Hearing Dates: January 10, 2024

Parties: The Grand at Guilderland  
428 State Route 146  
Guilderland, New York 12009  
By: Barbara Phair, Esq.

██████████ ██████████

By: Gloria Murray, Ombudsman

JURISDICTION

The Grand at Guilderland (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) Section 415.3(i).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and Discharge Notice

Facility Exhibits: 1 - Physician's Progress Note  
2 - Occupational Therapy Discharge Summary  
3 - Medicaid Eligibility Details  
4 - Resident Invoice  
5 - Progress Notes  
6 - CRU Summary Sheet  
7 - Admission Summary  
8 - Brief Interview for Mental Status (BIMS)

Facility Witnesses: Renee Shafer, Nurse Practitioner  
Karlle Yavorek, Director of Rehabilitation  
Judie Lawson, Charge Nurse  
Tekayo Melton, Finance Coordinator  
Cassandra Skinner, Director of Social Work

Appellant's Exhibits: None

Appellant's Witnesses: Gloria Murray, Ombudsman Coordinator  
Appellant testified on her own behalf.



the grounds of failure to pay the Facility after being given reasonable notice. (ALJ I.)

4. During the Appellant's stay at the Facility, from [REDACTED], 2023, to [REDACTED] 2024, the Appellant has refused to pay her bill and has been uncooperative with possible payment plans to pay for her outstanding bill. During this period, the Appellant has amassed an outstanding debt of \$ [REDACTED] due to the Facility. (Ex. 4.; T. Melton.)

5. The Facility determined to discharge the Appellant to the [REDACTED] located at [REDACTED], [REDACTED] [REDACTED]. (ALJ I.)

6. The Appellant owns a home in the community, but discharge to her home is not possible because the home has been deemed uninhabitable by the town of Guilderland. (T. Skinner, Appellant.)

7. The Appellant no longer requires residential health care. She has met her goals and has no skilled needs. She ambulates with the assistance of a rolling walker and requires no assistance with her Activities of Daily Living (ADLs), other than verbal cues. She is independent in all areas. (ALJ I., Ex. 6.; T. Shafer, Yavorek, Lawson.)

8. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending Physician, that discharge to the community, including to a shelter, is appropriate for Appellant. (Ex. 1, T. Shafer, Yavorek, Lawson, Skinner.)

9. The Appellant remains at the Facility pending the outcome of this appeal.

#### APPLICABLE LAW

A residential health care facility (also referred to in the Department of Health Rules and Regulations as a nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. Public Health Law Sections 2801(2)(3); 10 NYCRR Section 415.2(k).

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR Section 415.3[i][1]).

The Facility alleges the Appellant's discharge is permissible pursuant to 10 NYCRR Section 415(i)(1)(i)(b), which states in relevant part:

[T]ransfer and discharge shall be permissible when the resident has failed, after reasonable and appropriate notice, to pay for...a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid. Such transfer or discharge shall be permissible only if a charge is not in dispute...

Under the hearing procedures at 10 NYCRR Section §415.3(i)(2)(ii), the Facility bears the burden to prove a discharge is necessary and the discharge plan is appropriate. Under the New York State Administrative Procedures Act (SAPA) Section 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 conclusion or fact; less than preponderance of 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 (3<sup>rd</sup> Dept. 1984), *appeal dismissed* 63 N.Y.2d 649.

#### DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] [REDACTED] 2023, with primary diagnoses including [REDACTED],





from the Facility rent free since [REDACTED] 2023. (Ex. 4.; T. Appellant.)

Additionally, the Appellant no longer requires the care of a skilled nursing facility. She is independent in her ADLs, transfers independently, ambulates with the help of a rolling walker, and can administer her own medications. It is the professional opinion of the Appellant's caregivers at the Facility, including the Facility's attending physician, nurse practitioner, rehabilitation director, charge nurse, and social work director, that with verbal cueing, discharge to the community, including to a shelter, is appropriate for the Appellant. (T. Shafer, Yavorek, Lawson, Skinner.)

The Facility has proven its determination to discharge the Appellant is correct due to the Appellant's failure to pay for her care at the Facility and that she has shown no intention of paying in the future. Discharge to a shelter is appropriate as the Appellant is both mentally and physically capable of caring for herself.

CONCLUSION

The Grand at Guilderland has established that its determination to discharge the Appellant is correct and the proposed discharge location is appropriate.

DECISION

The appeal by Appellant is therefore DENIED.

The Facility is authorized to discharge the Appellant upon receipt of this decision.

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: Albany, New York  
January 16, 2023

Matthew C. Hall / cmj  
Matthew C. Hall  
Administrative Law Judge

To:

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