



Department  
of Health

ANDREW M. CUOMO  
Governor

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

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

October 10, 2017

**CERTIFIED MAIL/RETURN RECEIPT**

Bruce Zarett, Administrator  
Linden Center for Nursing & Rehab  
2237 Linden Boulevard  
Brooklyn, New York 11207

Eve Green Koopersmith, Esq.  
Garfunkel Wild, P.C.  
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: ISM  
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

RUTLAND NURSING HOME

Respondent,

to discharge her from a residential  
healthcare facility

DECISION  
AND ORDER

On ██████ ██████, 2017, Rutland Nursing Home ("the Facility") transferred Aileen King ("the Resident") to ██████ ██████ ██████ ("the Hospital"). The Facility is affiliated with the Hospital and located on the Hospital's campus in ██████. On ██████ 2017, the Resident was discharged from the Hospital to Linden Center for Nursing and Rehabilitation instead of being readmitted to the Facility, and the Resident's ██████ contacted the New York State Health Department's hotline to request the commencement of this appeal. The hearing before William J. Lynch, Esq., Administrative Law Judge ("ALJ") was initially scheduled for September 18, 2017. At Respondent's request, the hearing was adjourned to October 2, 2017.

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 Linden Center for Nursing and Rehabilitation. 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: David and Gloria Street, Resident's son-in-law and daughter; Eve Green Koopersmith, Esq., Garfunkel Wild, P.C., Facility's attorney; Bruce Zarett, M.A., Administrator; Marra Blank, R.N., Director of Nursing.

The following items were admitted into evidence:

ALJ Ex. 1 - Facility's bed hold letter

ALJ Ex. 2 - Investigation summary by Marra Blank, R.N.

Facility Ex. 1 - Nursing Progress Notes for [REDACTED], 2017

Facility Ex. 2 - Memorandum by Andriana Stephen, R.N.

Facility Ex. 3 - Patient Review Instrument ("PRI")

Facility Ex. 4 - Discharge Notice dated [REDACTED] 2017

At the conclusion of the hearing, the Administrative Law Judge rendered an oral decision and order on the record, requiring the Facility to readmit the Resident. This written decision confirms the oral decision and order made on October 2, 2017.

### 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 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.

1. The Resident was admitted to the Facility on [REDACTED] [REDACTED] 2017, at 3:00 p.m. Her diagnoses included [REDACTED] [REDACTED] and [REDACTED] with a history of [REDACTED]. She is [REDACTED] years of age. (Recording @ 33:30; Facility Ex. 1).

2. The Resident was alert and oriented to person only with [REDACTED] that afternoon and evening. She had a history of falls and [REDACTED]. Her bed was placed in the lowest position, floor mats were placed on both sides of the bed, and side rails were up. (Facility Ex. 1; Recording @ 18:45).

3. That night at 9:15 p.m., the Resident was found in a [REDACTED] [REDACTED] on the floor next to the bed. She was transferred to the

Hospital for a [REDACTED] Scan to rule out any injury. (Facility Ex. 1; Recording @ 20:45).

4. The Facility issued a notice indicating that the Resident did not attain bed-hold status because she did not meet the 30-day requirement, but that the Resident would be readmitted to an available bed upon discharge from the Hospital. (ALJ Ex. 1).

5. On or about [REDACTED] 2017, the Resident was ready to be discharged from the Hospital. Rather than return the Resident to the Facility, a PRI was sent to six other nursing homes. (ALJ Ex. 2).

6. On [REDACTED] 2017, a discharge planning meeting was held at the Hospital. The Resident's [REDACTED] insisted that the Resident be returned to the Facility. (ALJ Ex. 2; Recording @ 23:00)

7. A second discharge planning meeting was held at the Hospital on [REDACTED] [REDACTED] 2017. The Resident's [REDACTED] again insisted that the Resident be returned to the Facility and that the Facility provide one-to-one observation. The Facility's administrator determined that "discharge was in the Resident's best interest" because it could not provide the care that the Resident's [REDACTED] was "demanding." (ALJ Ex. 2; Recording @ 32:30).

8. A third discharge planning meeting was held at the Hospital on [REDACTED] [REDACTED] 2017, and a fourth meeting was held by telephone on [REDACTED] [REDACTED] 2017. In the telephone discussion, the Resident's [REDACTED] was told that the insurance company had called case management and stated that the Resident's case was going to be closed due to a delay in placement. He was also told the Resident might not be accepted into rehabilitation due to her poor response to physical therapy. (ALJ Ex. 2).

9. The Resident was discharged to Linden Center for Nursing and Rehabilitation on [REDACTED] 2017. (ALJ Ex 2).

10. The Facility did not issue a discharge notice to the Resident and designated representative prior to her discharge to Linden Center for Nursing and Rehabilitation. The Facility did not issue a discharge notice until [REDACTED] 2017. (Facility Ex. 4; Recording @ 1:37:15).

#### ANALYSIS AND CONCLUSIONS

Before a facility discharges a resident, the facility 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 discharged the Resident, but never issued a discharge notice.

When a facility transfers a resident for any reason, the facility must also verbally inform and provide written information about the bed-hold policy to the resident and the designated representative. (10 NYCRR § 415.3[h][3]). In this instance, the Facility informed the Resident that she had not attained bed-hold status because she did not meet the 30-day requirement, but that she would be readmitted to either her current bed, if available, or another bed upon discharge from the Hospital.

Based on the record in this proceeding, the Facility failed to establish that it issued a discharge notice prior to the Resident's discharge. (10 NYCRR § 415.3[h][1][iii][a]). The Facility did issue a discharge notice on [REDACTED], 2017, but that notice did not state a valid basis to discharge the Resident. The notice alleged that the discharge was

necessary for the Resident's welfare and the needs of the Resident cannot be met by Rutland Nursing Home due to: The family's demand about the level of care to be provided as a condition for re-admission, including the nursing home providing 1-to-1 care and that all bed-side-rails be up. (Facility Ex. 4).

Although the Facility should consult with family members on issues related to the plan of care, the interdisciplinary care team must make that determination based upon their own professional judgment. The record does establish that the Resident's [REDACTED]

█ had been insisting that the Facility provide 1-to-1 care, but his advocacy for the Resident to receive a higher level of care or specific services is not a basis for the Resident's discharge. The regulations do permit discharge when necessary for the resident's welfare and the resident's needs cannot be met (10 NYCRR § 415.3[h][1][i][1]), but the Facility provided no evidence to establish that it was unable to meet the Resident's needs.

DECISION AND ORDER

1. This Decision confirms the oral decision made on the record on October 2, 2017, which required 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  
October 6, 2017

  
WILLIAM J. LYNCH  
Administrative Law Judge