



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

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

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

February 15, 2018

**CERTIFIED MAIL/RETURN RECEIPT**

Carolee Lee, Dir. Of SW  
Tarrytown Hall Care Center  
20 Wood Court  
Tarrytown, New York 10591

[REDACTED]  
c/o Tarrytown Hall Care Center  
20 Wood Court  
Tarrytown, New York 10591

**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 /CAC*  
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

TARRYTOWN HALL CARE CENTER,

Respondent,

to discharge him from a residential health  
care facility.

COPY

DECISION

Tarrytown Hall Care Center ("Facility") issued a Notice of Transfer/Discharge, dated [REDACTED] 2018, to [REDACTED] ("Resident"). The Resident appealed the Facility's proposed discharge. On February 9, 2018, a hearing 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 in 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.

Evidence was received and witnesses were examined. An audio recording of the proceeding was made. The hearing was held at the

Facility located at 20 Wood Court, Tarrytown, New York. The following individuals were present for the hearing: [REDACTED] Resident; Carolee Lee, Director of Social Work; Michelle Mercado, Social Worker; Rene Gebusion, Physical Therapist; Darvina Rodriguez, Administration and Finance Coordinator; Janie Swedenburg, Administrator, and Administrative Law Judge Natalie Bordeaux.

STATEMENT OF THE CASE

The Facility issued a determination proposing to discharge the Resident effective [REDACTED], 2018. The first stated reason for the discharge was that the Resident's health had improved sufficiently so that he no longer required the services provided by a skilled nursing facility. The second reason was that the Resident failed to pay for his stay at the Facility. The proposed discharge location was the Resident's prior home where his [REDACTED] resides at [REDACTED] in the [REDACTED]. The Resident filed a timely request for an appeal of the discharge decision and has remained in the Facility pending this determination.

### STATEMENT OF ISSUES

The issues to be determined in this proceeding are whether the Facility has established a basis which permits the Resident's discharge from the Facility and whether the proposed discharge plan is appropriate. The Facility has the burden of proving 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 Resident is a [REDACTED] year-old male who was admitted to the Facility on [REDACTED], 2017, for [REDACTED]-term rehabilitation. (Facility 2).

2. The Resident obtained a [REDACTED] and completed a program of physical therapy. He still requires some assistance putting on his [REDACTED] but he can now ambulate

independently and perform all activities of daily living.  
(Recording @ 18:40).

3. The Resident can receive services in the community from [REDACTED] Nurse Service [REDACTED] to help with his transition back to the community including physical and occupational therapy.  
(Facility Ex. 3; Recording @ 16:00).

4. The Facility's interdisciplinary care team determined that the Resident no longer required skilled nursing services and could safely be discharged. (Facility Ex. 2; Recording @ 16:30).

5. The Resident's attending physician determined that the Resident was medically stable and agreed with the discharge plan.  
(Facility Ex. 4).

6. Medicare covered the cost of the Resident's stay at the Facility for [REDACTED] days. The Facility attempted to submit a complete Medicaid application on the Resident's behalf, but the Resident and his [REDACTED] have not provided required documentation regarding real estate ownership, assets and income. The Facility provided the Resident with notice that he owes [REDACTED] through [REDACTED] [REDACTED], 2018. (Facility Ex. 6, 7; Recording @ 9:00).

7. On [REDACTED] 2018, the Facility issued a discharge notice to the Resident which proposes discharge to the residence

at [REDACTED], where his [REDACTED] resides.  
(Facility Ex. 1).

8. At the hearing, the Resident claimed that he had an argument with his [REDACTED] and would not return there. He also alleged that he transferred his ownership interest in the house to his [REDACTED]. He stated that he ultimately intended to reside in the [REDACTED] but that he would prefer discharge to the home of a [REDACTED] in [REDACTED] for the interim upon discharge. (Recording @ 49:50).

9. In a conference call with the parties on February 12, 2018, the Resident stated that he had confirmed his ability to reside with his [REDACTED] and provided the address. By mutual consent, the Facility issued an amended discharge notice, which proposes discharge to the home of the Resident's [REDACTED] at [REDACTED].  
[REDACTED] (Facility Ex. 8).

#### ANALYSIS AND CONCLUSIONS

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR 415.3[h][1]). The Facility alleged that the Resident's discharge is permissible pursuant to 10 NYCRR 415(h)(1)(i)(a)(2), which states:

The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.

The Facility established through testimony and documents that there is no reason for the Resident to remain in a skilled nursing facility and that the Resident's medical conditions can be managed on an outpatient basis. After completing a program of rehabilitation, the Resident can independently perform all activities of daily living and requires no skilled nursing care.

The Facility also alleges that the Resident's discharge is permissible pursuant to 10 NYCRR 415(h)(1)(i)(b), which permits the transfer of a resident when:

[T]he resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third party insurance) 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.

The Resident did not dispute the amount that is owed to the Facility. The Facility social worker explained that she had made repeated efforts to obtain the Resident's cooperation in completing a Medicaid application or in privately paying for his stay at the Facility, but was unsuccessful.

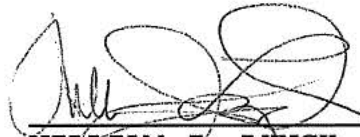
Based upon the evidence produced at the hearing, I find that the Resident no longer needs to reside in a skilled nursing facility and that he can obtain any required follow-up medical care on an outpatient basis while living in the community. The Resident may be discharged in accordance with the amended discharge notice effective [REDACTED] 2018.

DECISION AND ORDER

1. The Facility is authorized to discharge the Resident in accordance with its discharge plan on or after [REDACTED] 2018.

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: Albany, New York  
February 15, 2018

  
\_\_\_\_\_  
WILLIAM J. LYNCH  
Administrative Law Judge