



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

March 20, 2019

## CERTIFIED MAIL/RETURN RECEIPT

Maureen Peters, Director of Social Work  
Silvercrest Center for Nursing & Rehabilitation  
144-45 87<sup>th</sup> Avenue  
Briarwood, New York 11435

██████████  
c/o Silvercrest Center for Nursing  
and Rehabilitation  
144-45 87<sup>th</sup> Avenue  
Briarwood, New York 11435

**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,

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cmg  
Enclosure

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

[REDACTED]

Appellant,

from a determination by

**Silvercrest Center for  
Nursing and Rehabilitation**

Respondent,

to discharge him from a residential  
health care facility.

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ORIGINAL

DECISION

Hearing Before:

Natalie J. Bordeaux  
Administrative Law Judge

Held at:

Silvercrest Center for Nursing and Rehabilitation  
144-45 87<sup>th</sup> Avenue  
Briarwood, New York 11435

Hearing Date:

February 27, 2019  
The record closed March 19, 2019

Parties:

Silvercrest Center for Nursing and Rehabilitation  
By: Maureen Peters, Director of Social Work  
Silvercrest Center for Nursing and Rehabilitation  
144-45 87<sup>th</sup> Avenue  
Briarwood, New York 11435

[REDACTED]  
*Pro Se*

### JURISDICTION

By notice dated [REDACTED], 2019, Silvercrest Center for Nursing and Rehabilitation (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (the Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 NYCRR § 415.3(h).

### HEARING RECORD

Facility witnesses:	Maureen Peters, Director of Social Work Gale Halley, Director of Nursing Gerald Dumay, Social Worker Mohammad Syed, Director of Rehabilitation
Facility exhibits:	1-4
Appellant witnesses:	[REDACTED], Appellant
Appellant exhibits:	A

The notice of hearing, discharge notice, and the accompanying cover letter were marked as ALJ Exhibit I. A digital recording of the hearing was made.

### ISSUES

Has Silvercrest Center for Nursing and Rehabilitation established that its determination to discharge the Appellant was correct and that its discharge plan is appropriate?

### FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was transferred to the Facility from [REDACTED] Hospital on [REDACTED] 2018 for treatment of a [REDACTED] that required antibiotic therapy. The infection resolved within ten days of admission and has not returned. (Exhibits 3 and 4; Recording @ 2:08.)

2. The Appellant also has the following medical conditions which were not the basis for his admission: [REDACTED]  
[REDACTED] (Exhibits 3 and 4; Recording @ 16:00.)
3. The Appellant does not require skilled nursing care or rehabilitative services. (Exhibit 3; Recording @ 12:54, 14:30.)
4. By notice dated [REDACTED] 2019, the Facility determined to discharge the Appellant on [REDACTED], 2019 because his health has improved sufficiently to the extent that he no longer requires the services provided by the facility. The notice proposes to discharge the Appellant to his last known address of record, an apartment located in [REDACTED]. (Exhibit 1.)
5. The Appellant's clinical record contains documentation from the Appellant's physician and interdisciplinary care team that the Appellant no longer requires the services of a skilled nursing facility and that his needs can be met in the community. (Exhibit 3.)
6. The Appellant remains at the Facility pending the outcome of this 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. Public Health Law §§ 2801(2)-(3); 10 NYCRR § 415.2(k).

Department regulations at 10 NYCRR § 415.3(h) describe the transfer and discharge rights of residential health care facility residents. They state, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

- (i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the

comprehensive care plan and in recognition of the rights of other residents in the facility:

(a) the resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that:

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

### DISCUSSION

By notice dated [REDACTED] 2019, the Facility determined to discharge the Appellant on [REDACTED], 2019 because his health has improved sufficiently so that he no longer requires the services provided by the facility. (Exhibit 1.) The Appellant's medical conditions are all stable and require neither medical nor skilled nursing intervention. (Recording @ 14:17.) His [REDACTED] 2018 admission was based on a need for treatment of a [REDACTED], which resolved within ten days of his entry to the Facility. (Recording 2:08.) He was also discharged from all rehabilitative therapies within weeks of admission. (Recording @ 14:30.)

For several months, the Appellant has only required and received assistance from staff with performing activities of daily living. The Facility provides medication to the Appellant, which he may obtain in the community and administer himself. The Appellant also receives assistance with dressing his [REDACTED], incontinence care, and bathing. (Exhibits 3 and 4; Recording @ 8:52, 17:50.)

The Appellant's attending physician at the Facility, has determined that the Appellant may be safely discharged. Practitioners in other disciplines, including nursing, social work, and

rehabilitation, also agree that the Appellant does not require specialized services from the Facility, and that his needs can be met in the community. (Exhibits 3 and 4; Recording @ 2:08, 14:17.)

Although the Appellant disagreed with the Facility's determination and contended that he continues to need help, he was unable to identify a need for skilled services. Rather, his testimony confirmed that he requires assistance with bathing, dressing, and incontinence care. (Recording @ 17:50.) Those services are available in the community and would be arranged by the Appellant's Medicaid managed care plan. The Facility has established that the Appellant no longer requires the services of a skilled nursing facility.

The Facility proposes to discharge the Appellant to his [REDACTED] rented apartment in [REDACTED] (Exhibit 4; Recording @ 16:50.) The Appellant confirmed that the address listed on the [REDACTED] 2019 discharge notice belongs to his [REDACTED] and that he had lived there before his admission. However, he explained that his [REDACTED] was served with an eviction notice and does not know how much longer she will be able to legally remain in the apartment. (Recording @ 17:20.) The Appellant is willing to live with his [REDACTED] if her housing situation is stable. He has no other home available in the community. (Recording @ 30:50.)

Members of the Facility social work department repeatedly stated that the Appellant had not been forthcoming when staff attempted to discuss possible discharge locations. (Recording @ 34:40, 42:07, 46:25.) The Appellant acknowledged that neither he nor his [REDACTED] ever informed Facility staff of his [REDACTED] difficulties. He merely advised a member of the Facility's finance department that his [REDACTED] was relocating but did not offer further explanation. (Recording @ 19:00.)

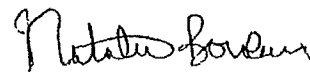
Based upon the scant information that the Appellant made available to Facility staff before the date of this hearing, it was reasonable for the Facility to conclude that discharging the Appellant to his [REDACTED] apartment offered a safe and stable arrangement in a community setting. In addition, it was the only community-based discharge location available and suited to the Appellant's needs. As the Appellant noted during the hearing, he is likely ineligible for all or most assisted living facilities because he is under the age of 55. The Appellant also correctly asserted that he does not meet the criteria for shelter placement because he requires assistance with activities of daily living. 18 NYCRR § 491.4(b).

The hearing record was left open to afford the Appellant an opportunity to provide documentation substantiating his [REDACTED] housing problems. On [REDACTED] 2019, the Appellant submitted a [REDACTED] 2019 Notice of Eviction which was served on the Appellant's [REDACTED] (Exhibit A.) This documentation shows that the Appellant's [REDACTED] continued occupancy of the apartment is uncertain. An appropriate discharge plan must address the Appellant's medical needs and how those needs will be met after discharge. 10 NYCRR § 415.3(h)(1)(vi). The Appellant's needs are not adequately addressed by discharge to an apartment to which he has no lawful access. In light of the newly-provided information, the proposed discharge location is not appropriate. Therefore, the Facility's determination is not sustained.

### DECISION

Silvercrest Center for Nursing and Rehabilitation is not authorized to discharge the Appellant based upon its January 9, 2019 discharge notice.

Dated: March 19, 2019  
New York, New York



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Natalie J. Bordeaux  
Administrative Law Judge