



## Department of Health

ANDREW M. CUOMO  
Governor

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

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

June 25, 2019

### CERTIFIED MAIL/RETURN RECEIPT

Coleman Pettway, Social Worker  
Buffalo Community Healthcare Center  
1205 Delaware Avenue  
Buffalo, New York 14209

██████████  
c/o Buffalo Community Healthcare Center  
1205 Delaware Avenue  
Buffalo, New York 14209

Kelly Barrett, Esq.  
Center for Elder Law and Justice  
438 Main Street, Suite 1200  
Buffalo, New York 14202

**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

**Buffalo Community  
Healthcare Center,**

Respondent,

to discharge him from a residential  
health care facility.

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**ORIGINAL**

**DECISION**

Hearing before: John Harris Terepka  
Administrative Law Judge

Held at: Buffalo Community Healthcare Center  
1205 Delaware Avenue  
Buffalo, New York

Hearing date: May 13, June 24, 2019

Parties: Buffalo Community Healthcare Center  
1205 Delaware Avenue  
Buffalo, New York 14209  
By: Coleman Pettway, social worker

**[REDACTED]**  
Buffalo Community Healthcare Center  
By: Kelly Barrett, Esq.  
Center for Elder Law & Justice  
438 Main Street, Suite 1200  
Buffalo, New York 14202

### JURISDICTION

Buffalo Community Healthcare Center (the Respondent), a residential health care facility subject to Article 28 of the Public Health Law, determined to discharge [REDACTED] (the Appellant) from care and treatment in its nursing home. Pursuant to 10 NYCRR 415.3, the Appellant appealed the discharge determination to the New York State Department of Health.

### SUMMARY OF FACTS

1. Respondent Buffalo Community Healthcare Center is a residential health care facility (RHCF) located in Buffalo, New York.
2. Appellant [REDACTED], age [REDACTED] was admitted to the facility in [REDACTED] 2018 for short-term rehabilitation after hospitalization and a [REDACTED]. He is [REDACTED] with [REDACTED]. (Exhibit 3.)
3. By notice dated [REDACTED], 2019, the Respondent advised the Appellant that it had determined to discharge him on [REDACTED] 2019, on the grounds that his health has improved sufficiently that he no longer needs the services provided by the facility. (Exhibit ALJ I.)
4. The Respondent's [REDACTED] discharge notice also advised the Appellant that it had determined to discharge him on the grounds that he has failed, after reasonable and appropriate notice, to pay for his stay at the facility. (Exhibit ALJ I.)
5. The Appellant is no longer in need of nursing home care. His physical therapy goals have been met. He is independent with activities of daily living and care needs, is able to manage his own medications, and receives no services from the Respondent other than meals and medication. (Exhibit 2.)

6. The Appellant's treating physician at Buffalo Community, Dr. Nayan Das, has determined he is no longer in need of nursing home care and that discharge to the community is medically appropriate. (Exhibit 4.)

7. The discharge notice advised the Appellant that he would be discharged to the Erie County Department of Social Services (DSS), which will provide assistance with housing and social services. The discharge plan will include medication and medical referral and transportation to the Erie County DSS.

8. The Appellant remains at Buffalo Community Healthcare Center pending the outcome of this proceeding.

#### ISSUES

Has the Respondent established that the transfer is necessary and the discharge plan appropriate?

#### APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, is a residential facility providing nursing care to sick, invalid, infirm, disabled or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital. PHL 2801; 10 NYCRR 415.2(k).

Transfer and discharge rights of RHCF residents are set forth in Department regulations at 10 NYCRR 415.3(h). This regulation provides, 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:

...

(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.

...

(b) Transfer and discharge shall also be permissible when the 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. Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the funds.

...

(vi) provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility, in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and provide a discharge summary pursuant to section 415.11(d) of this Title; and

(vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.

The Respondent nursing home has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(h)(2)(iii)(b).

### DISCUSSION

The Respondent submitted documents (Exhibits 1-4), and testimony of Coleman Pettway, social worker; Michael Zent, physical therapist; Cristopher Otterbein, administrator; and Dawn LaMagna, director of nursing. The Appellant submitted documents (Exhibits A-C) and testified on his own behalf. The notice of hearing, with

attached copy of the notice of discharge, was entered into evidence as ALJ Exhibit I. The hearing was digitally recorded. (1h8m.)

The Respondent's evidence establishes that the Appellant is no longer in need of nursing home care. The Appellant does not dispute this conclusion. He is independent in his wheelchair and able to leave the facility on his own. He is independent with transfers, able to administer his medications and to perform all activities of daily living. He complains of [REDACTED] pain from [REDACTED] but the evidence fails to show a need to be in a nursing home for this condition. The Respondent has established grounds for discharge pursuant to 10 NYCRR 415.3(h)(1)(i)(a)(2).

The Respondent failed to establish grounds for discharge for failure to pay charges. It presented nothing beyond a vague allegation that a few months of care in late 2018 went unpaid as a result of an issue with insurance coverage. The Respondent presented no accounting of the charges, no statements or bills, and no evidence of reasonable and appropriate notice to the Appellant of unpaid charges. The Respondent failed even to state how much is allegedly owed. There may be unpaid charges for which the Appellant may be responsible, but the Respondent failed to prove them with sufficient evidence to meet its burden of establishing valid grounds for discharge pursuant to 10 NYCRR 415.3(h)(1)(i)(b).

With regard to the discharge plan, a nursing home must permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(h)(1)(vii). Although the Appellant has known since late [REDACTED] 2019 that the Respondent proposed to discharge him to the county DSS, he

has shown little effort to participate in or make his own alternative discharge arrangements in the last three months.

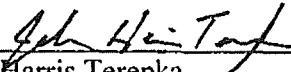
The Respondent made efforts to secure housing for the Appellant by referring him for local assistance, through which at least eight applications have been made on his behalf for housing in the Buffalo area. (Exhibit 2.) The Appellant acknowledged at the hearing that an offer of an apartment was actually secured for him, but he turned it down because he did not find the location convenient. The Respondent contacted the two shelters in the county that would take referrals directly from the nursing home, but there was no space available. Other shelters in the area must be secured through a referral to the county DSS, which will undertake assistance with housing and other needs.

The Respondent's obligation is to provide an appropriate discharge plan that meets the Appellant's needs, not necessarily the discharge plan of the Appellant's choice. He is not entitled to remain in nursing home care he does not need until he finds living arrangements that he wants. The Respondent made reasonable efforts to engage him in discharge planning before resorting to the county shelter. Under these circumstances, the Respondent's plan is appropriate and the Respondent is entitled to proceed with it.

**DECISION:** Respondent Buffalo Community Healthcare Center has established valid grounds for the discharge of Appellant [REDACTED]. Respondent has established that the discharge plan is appropriate. The Respondent is authorized to discharge the Appellant in accordance with the discharge notice.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York  
June 25, 2019

  
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John Harris Terepka  
Administrative Law Judge  
Bureau of Adjudication