



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

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

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

August 6, 2019

**CERTIFIED MAIL/RETURN RECEIPT**

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



**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: 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

**The Silvercrest Center for Nursing and Rehabilitation,**  
Respondent,

to discharge her from a residential health care facility.

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**ORIGINAL**

**DECISION**

**Hearing Before:** Ann H. Gayle  
Administrative Law Judge

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

**Hearing Date:** July 25, 2019

**Parties:** The Silvercrest Center for Nursing and Rehabilitation  
By: Maureen Peters, Social Work Director

**[REDACTED]**

*Pro Se*

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as The Silvercrest Center for Nursing and Rehabilitation (“Respondent” or “Facility”) 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.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(h). Respondent determined to, and did, discharge ██████████ ss (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(a)(2) which provides, in pertinent part:

- (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.

Appellant appealed this discharge determination to the New York State Department of Health, and a hearing on that appeal was held. Pursuant to 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer was necessary and the discharge plan is appropriate.

A digital recording of the hearing was made part of the record. Appellant appeared and testified on her own behalf. Appellant’s ██████████, assisted Appellant at the hearing and testified for Appellant. The following witnesses testified for Respondent: Antonet Dawes–Social Worker, Mohammad Syed–Director of Rehabilitation, Gale Halley–Clinical Care Coordinator, and Maureen Peters–Social Work Director. Lorna Laurent–Social Worker was also present at the hearing.

The following documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ and Facility Exhibits:

ALJ:

I: Notice of Hearing and attached Facility Discharge Notice

Facility:

- 1: Medical notes
- 2: Nursing notes
- 3: Social Work note

Appellant was given the opportunity but did not offer any documents into evidence.

**ISSUE**

Has The Silvercrest Center for Nursing and Rehabilitation established that the transfer was necessary and the discharge plan is appropriate?

**FINDINGS OF FACT**

Citations in parentheses refer to testimony (“T”) of witnesses and exhibits (“Ex”) found persuasive in arriving at a particular finding.

1. Respondent, The Silvercrest Center for Nursing and Rehabilitation (“Silvercrest”), is a residential health care facility located in Briarwood, New York. (Ex I)

2. Appellant, █, age █ was admitted to the Facility from █ Hospital on █ 2019, for short term rehabilitation, █ antibiotics and wound care.

Appellant’s past and present medical conditions include █ █ █

█ Appellant completed facility rehabilitation, she was educated in and demonstrated her ability to provide her own wound care, and she is able to manage her medical needs in the community. (Ex 3; T Peters, Halley, Syed)

3. By notice dated █ 2019, Respondent advised Appellant that it had determined to discharge her on the grounds that her health has improved sufficiently so that she no longer

needs the services provided by the Facility. The discharge date was to be ██████████ 2019, and Appellant was to be discharged to her ██████████ home. Appellant chose to be and was discharged on ██████████ 2019, to the home of her ██████████e who is “like a ██████████ to Appellant (“██████████ home”). (Ex I; T Peters, Halley, Appellant)

4. It is the professional opinion of Appellant’s caregivers at the Facility, including the Facility’s physician, that discharge to the community with home care services is appropriate for Appellant. Respondent made a referral to ██████████ a certified home health agency/CHHA, which evaluated Appellant for community rehabilitation, in-home nursing services, and home health care services. As of the hearing date, Appellant was receiving at-home physical therapy, a nurse was visiting her twice a week and changing the wound dressing, and Appellant was about to learn if a home health care aide had been approved. (Ex 1; Ex 2; Ex 3; T Dawes, Appellant)

5. Appellant has resided in her ██████████ home since the day she was discharged, ██████████ 2019.

#### DISCUSSION

The evidence presented by Respondent demonstrated that: Appellant completed her rehabilitative services; she is independent with her ADLs; her condition is stable; her medical conditions can be treated in the community; and discharge to a home in the community, with services, is a safe and appropriate discharge plan for Appellant.

Appellant testified that she wishes to return to the Facility to receive additional rehabilitation therapy and wound care. Appellant believes the home where she is living is not conducive for her well-being and healing. Appellant and her ██████████ testified that the home does not provide privacy for Appellant, and they believe it is not a proper environment for Appellant to care for her wound. Appellant testified that she and her ██████████ ██████████ in a ██████████ room with a ██████████, that there is only one bathroom which she shares with her

██████ / Silvercrest

██████ and a “██████ who occupies the bedroom, and that she must climb ██████ stairs to reach the bathroom.

Appellant has received services in the community subsequent to her ██████ discharge. Appellant receives physical therapy and nursing care in her ██████ home, and she receives wound care from a ██████ at ██████ Hospital and at the Center for Wound Healing located within Silvercrest (“Wound Center”).

On ██████ Appellant went to a scheduled appointment at the Wound Center. The wound appeared to be ██████ so the Wound Center sent Appellant to ██████ Hospital for ██████ ██████ she was not admitted to the hospital as the studies found no ██████. Appellant’s wound was treated by her ██████ on that date, and she was given a ██████ follow-up appointment. Additional treatment was provided at the ██████ follow-up visit, and the next follow-up ██████ appointment was scheduled for ██████, 2019.

On ██████ Appellant was seen by the visiting nurse. Appellant testified that the nurse, upon finding that Appellant’s ██████, her ██████ was ██████ and her ██████ was ██████ called 911, and Appellant was brought to ██████ Hospital where she was evaluated and released. Again, there was no admission to the hospital.

Appellant’s physical therapy at the Facility did not include stair training because the discharge location identified by Appellant, her ██████ home, did not require stair training. Appellant has, however, received physical therapy at home since her ██████ discharge from Silvercrest. It was Appellant’s understanding that the in-home physical therapy was expected to end the week after the hearing date.

Appellant believes that having gone to the hospital for suspected infection of the wound twice since her discharge demonstrates that she was not ready for discharge and needs to return

to the Facility. But Appellant has demonstrated that she, together with the visiting nurse, can care for her wound at home and know when to go to the hospital to seek immediate care when there seems to be a problem. Appellant has also demonstrated that she is capable of making and keeping scheduled outpatient appointments. Furthermore, each time Appellant has gone to the hospital, her wound was treated and she did not require hospitalization. The medical professionals' determinations to not admit Appellant to the hospital (twice) and to schedule Appellant's next ██████ appointment six weeks after her last appointment further demonstrate that she does not require a stay at the hospital or the Facility for professional treatment of her wound.

Appellant further testified that she did not have a home of her own prior to her admission to the Facility. She was "staying" with her sister before she went to ██████ in ██████ but that home is no longer available to her. Respondent worked with Appellant on finding housing in the community but the process could be lengthy. Appellant identified first one then another family member's home for discharge to the community with services. It is unfortunate that the home where Appellant is residing is not ideal for her but a return to the Facility is not warranted because Appellant, at the time of and subsequent to discharge, did not require skilled care.

Respondent has proven that Appellant's health had improved sufficiently that she no longer required skilled care and that discharge to the community with services is appropriate for Appellant at this time.

### DECISION

I find that the transfer was necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

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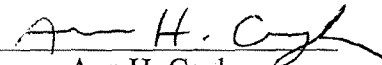
<sup>1</sup> Appellant sustained the ██████ injury/wound in ██████ it was treated in ██████ from ██████ to ██████ 2019. Appellant returned to New York in ██████; she went directly from the airport to ██████ Hospital where she received in-patient treatment until her discharge to the Facility on ██████ 2019. (T Appellant)

██████████ / Silvercrest

Respondent, The Silvercrest Center for Nursing and Rehabilitation, was authorized to discharge Appellant, ██████████, in accordance with its ██████████ 2019 discharge notice.

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: New York, New York  
August 6, 2019

  
Ann H. Gayle  
Administrative Law Judge

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

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