



Department of Health

ANDREW M. CUOMO
Governor

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

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

December 4, 2018

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o A. Holly Patterson
Extended Care Facility
875 Jerusalem Avenue
Uniondale, New York 11553

Marian Epstein, Director of Social Services
A. Holly Patterson Extended Care Facility
875 Jerusalem Avenue
Uniondale, New York 11553

[REDACTED]
Lisa McLaughlin, Social Worker
Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, New York 11554

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**

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

[REDACTED]

Appellant,

from a determination by

A. Holly Patterson Extended Care Facility,

Respondent,

to transfer him from a residential health care facility.

COPY

**FINAL
DECISION**

Hearing Before:

Ann H. Gayle
Administrative Law Judge ("ALJ")

Held at:

Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, New York 11554

Hearing Date:

October 10, 2018
The record closed on November 7, 2018

Parties:

A. Holly Patterson Extended Care Facility
By: Marian Epstein

[REDACTED] *Pro Se*¹

Also Present:

Nassau University Medical Center
By: Lisa McLaughlin
Director of Social Work

¹ With assistance from his [REDACTED] ("Appellant [REDACTED]"), and his [REDACTED] ("Appellant [REDACTED]"), (collectively, "Appellant's family") [REDACTED]

BACKGROUND

On [REDACTED] 2018, A. Holly Patterson Extended Care Facility (“AHP,” “Respondent” or “Facility”) transferred [REDACTED] (“Appellant” or “Resident”) from care and treatment in its nursing home to Nassau University Medical Center (“NUMC”) for an evaluation/test. When NUMC determined that Appellant was ready to be discharged to the Facility, Respondent refused to readmit him. Appellant’s [REDACTED] on behalf of Appellant, appealed the discharge determination to the New York State Department of Health (“NYSDOH”). The hearing on that appeal was held on October 10, 2018 (“hearing”).

A finding that Appellant was denied his legal rights as delineated in §415.3(h), and a ruling that Respondent must expeditiously readmit Appellant to its Facility, was made by the ALJ on the record at the October 10, 2018 hearing. An Interim Decision and Order (“Interim D&O”), confirming the oral decision made on the record at the hearing, that Respondent must readmit Appellant to its Facility before it admits any other resident was issued in this case on [REDACTED] 2018. The attached Interim D&O is fully incorporated into this Final Decision.

Upon reading the transcript (pages 1-133) of this proceeding and exhibits 1 and 2, and incorporating pages 2-6 of the Interim D&O into this Final Decision, I find no reason to alter the ruling rendered at the hearing or the orders in the Interim D&O.

STATEMENT OF ISSUES

Respondent transferred Appellant to NUMC for an evaluation/test on [REDACTED] 2018. When NUMC deemed Appellant ready for discharge to the Facility, Respondent refused to readmit Appellant to its Facility. The initial issue to be determined in this proceeding is whether Appellant was transferred/discharged in accord with his rights pursuant to 10 NYCRR §415.3.

DISCUSSION

Pursuant to 10 NYCRR §415.3(h)(1)(iii) and (iv), Respondent was required to notify Appellant and his representative of the transfer or discharge and the reasons for the move in writing before transferring Appellant to NUMC. The unsigned, purported Notices (Exhibits 1 and 2) were not provided to Appellant or his representative on or about ██████████ 2018. The Notice addressed to Appellant and purportedly given to him at the time of transfer to NUMC was not the proper Notice; it reads in part,

Regulation requires that we inform you that your relative (emphasis added) has been transferred/discharged from A. Holly Patterson...

...
***THIS DOES NOT MEAN THAT YOUR RELATIVE/
FRIEND WILL NOT RETURN TO AHP*** (emphasis in original)

A Notice to Appellant's ██████████ and a defective Notice of Transfer with a transfer location of an acute care hospital that was given to Appellant and Appellant's ██████████ for the first time at the hearing, two and a half months after the transfer occurred, does not satisfy the written notice requirements of §415.3(h). Even if the proper notices were prepared and given to Appellant and his representative at or around the time of transfer, a "Transfer to NUMC" (Exhibits 1 and 2) is not an appropriate discharge location.

As challenging as it is to manage Appellant's care due to his behavioral issues and his refusal to ██████████ as described by both the Facility and NUMC witnesses, an acute care setting such as NUMC is not the appropriate place for Appellant who did not require in-patient hospitalization. Additionally, the intense care provided by hospital staff to Appellant (who did not require hospitalization) deprived other patients who required such hospitalization of the care they required and deserved.

[REDACTED] A.Holly Patterson

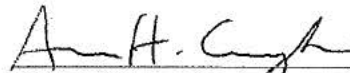
Appellant's family would like to have a [REDACTED] they choose, and who is not connected with AHP/NUMC, evaluate Appellant. The Interim D&O strongly encouraged Appellant's family to pursue such evaluation. Appellant's family is again strongly encouraged to pursue such evaluation if this has not already been done.

FINAL DECISION

The ruling at the hearing, as memorialized in the Interim D&O, that Respondent must readmit Appellant to its Facility before it admits any other resident, and that Respondent shall not delay readmission of Appellant until a bed is available on Unit 42, is confirmed.

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
December 3, 2018


Ann H. Gayle
Administrative Law Judge

TO: [REDACTED]
c/o A. Holly Patterson Extended Care Facility
875 Jerusalem Avenue
Uniondale, New York 11553

[REDACTED]
Marian Epstein, Director of Social Services
A. Holly Patterson Extended Care Facility
875 Jerusalem Avenue
Uniondale, New York 11553

Lisa McLaughlin, Social Worker
Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, New York 11554



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 12, 2018

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, New York 11554

Lisa McLaughlin, Social Worker
Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, New York 11554

[REDACTED]
Marian Epstein, Director of Social Services
A. Holly Patterson Extended Care Facility
875 Jerusalem Avenue
Uniondale, New York 11553

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

COPY

**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

A. Holly Patterson Extended Care Facility,

Respondent,

to transfer him from a residential health care facility.

**INTERIM
DECISION
AND ORDER**

Hearing Before:

Ann H. Gayle
Administrative Law Judge

Held at:

Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, New York 11554

Hearing Date:

October 10, 2018

Parties:

A. Holly Patterson Extended Care Facility
By: Marian Epstein

[REDACTED] *Pro Se*¹

Nassau University Medical Center
By: Lisa McLaughlin
Director of Social Work

¹ With assistance from his [REDACTED] ("Appellant's [REDACTED]"), and his [REDACTED] ("Appellant's [REDACTED] collectively, "Appellant's family")

JURISDICTION

Pursuant to Public Health Law §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 A. Holly Patterson Extended Care Facility ("AHP" "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. §415.3(h)(1)(iii)(a) provides that, before it transfers or discharges a resident, the facility shall notify the resident and designated representative of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand. Subsections (iii) and (iv) of §415.3(h)(1) both require that all nursing home residents be provided with the notice outlined in §415.3(h) before transfer/discharge. The notice must include, *inter alia*, a statement that the resident has the right to appeal the action to the New York State Department of Health ("NYSDOH"). §415.3(h)(1)(iii)(c) and §415.3(h)(1)(v). A resident who believes the facility has erroneously determined that he or she must be transferred or discharged has the right to an administrative hearing and to return to the facility to the first available semi-private bed if the resident wins the appeal. §415.3(h)(2)(i)(a), (c) and (d). The facility has the burden of proving that the transfer was necessary and the discharge plan is appropriate. §415.3(h)(2)(iii)(b).

BACKGROUND

On [REDACTED] 2018, Respondent transferred [REDACTED] "Appellant" or "Resident") from care and treatment in its nursing home to Nassau University Medical Center ("NUMC") for

an evaluation/test. When NUMC determined that Appellant was ready to be discharged to the Facility, Respondent refused to readmit him. Appellant's [REDACTED] on behalf of Appellant, appealed the discharge determination to the NYSDOH. The hearing on that appeal was held on October 10, 2018².

Appellant, Appellant [REDACTED] and Appellant [REDACTED] testified for Appellant. The following Facility representatives testified for Respondent: Marian Epstein—Director of Social Work, Marie Maglorre, RN—Director of Nursing, and Lawrence Diamond, MD—Medical Director. The following NUMC representatives also testified: Jose O. Mejia, MD, Vida Oduro-McCue, RN—Nurse Manager, Jeremy DeBari—Social Worker, and Lisa McLaughlin—Director of Social Work.

Documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ and Facility Exhibits (“Ex”) as follows:

ALJ:

I: Notice of Hearing

Facility:

- 1: Notice of Transfer or Discharge [Hospital Transfer or Therapeutic Leave of Absence] addressed to Appellant
- 2: Notice of Transfer or Discharge addressed to Appellant's [REDACTED]

Appellant and NUMC were given the opportunity but did not offer any documents into evidence.

STATEMENT OF ISSUES

Respondent transferred Appellant to NUMC for an evaluation/test on [REDACTED], 2018. When NUMC deemed Appellant ready for discharge to the Facility, Respondent refused to readmit Appellant to its Facility. The initial issue to be determined in this proceeding is whether

² A court reporting service is preparing a transcript of the proceeding; a final determination will be issued following receipt of the transcript.

██████████ A.Holly Patterson

Appellant was transferred/discharged in accord with his rights pursuant to 10 NYCRR §415.3.

DISCUSSION

Pursuant to 10 NYCRR §415.3(h)(1)(iii) and (iv), Respondent was required to notify Appellant and his representative of the transfer or discharge and the reasons for the move in writing before transferring Appellant to NUMC. Despite Respondent's claims that both Appellant and Appellant's ██████████ were provided with a Notice of Transfer or Discharge ("Notice"), a Notice did not accompany Appellant when he was transferred to NUMC, and Appellant's ██████████ did not receive such Notice from Respondent, nor did Respondent provide documentary evidence/proof that the Notice was mailed to her.

I ruled on the record at the hearing that the unsigned, purported Notices (Ex 1 and Ex 2) were not provided to Appellant or his ██████████ on or about ██████████ 2018, and that the Notice addressed to Appellant and purportedly given to him at the time of transfer to NUMC was not the proper Notice; it reads in part,

Regulation requires that we inform you that your relative
(emphasis added) has been transferred/discharged from A. Holly
Patterson...

...
***THIS DOES NOT MEAN THAT YOUR RELATIVE/
FRIEND WILL NOT RETURN TO AHP*** (emphasis in
original)

A Notice to Appellant's ██████████ and a defective Notice of Transfer with a transfer location of an acute care hospital that was given to Appellant and Appellant's ██████████ for the first time at the October 10, 2018 hearing does not satisfy the written notice requirements of §415.3(h). Even if the proper notices were prepared and given to Appellant and his representative at or around the time of transfer, a "Transfer to NUMC" (Ex 1 and Ex 2) is not an appropriate discharge location.

██████████ A.Holly Patterson

Both the Facility and NUMC witnesses described the challenges of managing Appellant's care due to Appellant's alleged rude, disrespectful treatment of staff and others (which Appellant denied), and his refusal to ██████████ (which Appellant acknowledged). Dr. Diamond suggested that Appellant should undergo a ██████████ evaluation performed at NUMC to determine which if any ██████████ medications could be beneficial, and NUMC should then begin and monitor such regimen while Appellant is at NUMC so that Appellant could continue the already established and tested regimen at the Facility upon discharge. Dr. Mejia was amenable to this but Ms. McCue, Nurse Manager at NUMC, clearly articulated that a setting such as NUMC is not the appropriate place for Appellant who is ready for discharge and needs to be back in the Facility. Appellant's family adamantly refused to consent to such evaluation; Appellant's family would like to have ██████████ they choose, and who is not connected with AHP/NUMC, evaluate Appellant. Appellant's family is strongly encouraged to pursue this evaluation.

A finding that Appellant was denied his legal rights as delineated in §415.3(h), and a ruling that Respondent must expeditiously readmit Appellant to its Facility, was made by the ALJ on the record at the October 10, 2018 hearing. Respondent acknowledged that it would work diligently to readmit Appellant as soon as a bed becomes available on the most appropriate unit in a setting that would keep Appellant and the other residents safe without unnecessarily relocating other residents. The parties agree that Unit 42 is the most appropriate setting for Appellant; however, Appellant's family indicated that they would accept a bed in another unit if that would expedite Appellant's readmission to AHP.

[REDACTED] A.Holly Patterson

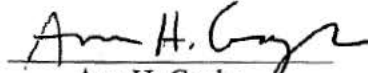
INTERIM DECISION AND ORDER

Respondent must readmit Appellant to its Facility before it admits any other resident;

Respondent **shall not** delay readmission of Appellant until a bed is available on Unit 42.

This Interim Decision and Order confirms the oral decision made on the record on October 10, 2018.

Dated: New York, New York
October 12, 2018


Ann H. Gayle
Administrative Law Judge

TO: [REDACTED]

Nassau University Medical Center
2201 Hempstead Turnpike
East Meadow, New York 11554

[REDACTED]
Lisa McLaughlin, Social Worker
Nassau University Medical Center
2201 Hempstead Turnpike
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