



## 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 19, 2019

### CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Wingate at Ulster  
One Wingate Way  
Highland, New York 12528

Tom Morris, Ombudsman  
c/o Gloria Murray  
gloria@hudsonvalleyltcop.org

Carl Kelly, Administrator  
Wingate at Ulster  
One Wingate Way  
Highland, New York 12528

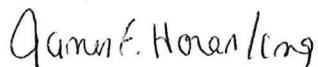
RE: In the Matter of ██████████ - Discharge Appeal

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

WINGATE OF ULSTER

to discharge him from a residential health care facility.

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**COPY**

**DECISION**

Before: Tina M. Champion  
Administrative Law Judge

Held at: Wingate at Ulster  
One Wingate Way  
Highland, New York 12528

Date: March 14, 2019

Parties: Wingate at Ulster  
By: Carl Kelly, Administrator

[REDACTED]  
Assisted by: Tom Morris, Ombudsman

**JURISDICTION**

By notice dated [REDACTED] 2019, Wingate at Ulster (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) 415.3(h).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. An audio recording of the proceeding was made.

**HEARING RECORD**

ALJ Exhibits: I – Notice of Hearing  
II – Transfer/Discharge Notice

Facility Exhibits: 1 – PT and OT Discharge Summaries

Appellant Exhibits: None

Facility Witnesses: Victoria Pippa, Social Worker

Appellant Witnesses: Appellant testified on his own behalf

**FINDINGS OF FACT**

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2018, for short-term rehabilitation due to [REDACTED] pain, other [REDACTED] pain, and difficulty walking. (Testimony [T.] Pippa; Facility Ex. 1.)

2. The Appellant received physical therapy (PT) and occupational therapy (OT) services from the Facility. He was discharged from both on [REDACTED] 2018 because he met his goals. (Facility Ex. 1.)

3. On [REDACTED] 2019, the Facility issued a Transfer and Discharge Notice to the Appellant which proposed discharge to [REDACTED], effective [REDACTED] 2019. (ALJ Ex. I.)

4. [REDACTED] is a "boarding home" that is willing to accept the Appellant and has a bed available for him. (T. Pippa.)

5. The Transfer and Discharge Notice states that the reason for discharge is that the Appellant does "not require skilled nursing care on a daily basis." (ALJ Ex. II.)

6. The Appellant timely appealed the Facility's determination and has remained at the Facility during the pendency of the appeal.

7. The Appellant disagrees solely with the discharge location and does not contest the Facility's determination that the Appellant is ready for discharge from the Facility. (T. McLean.)

### **ISSUES**

Has the Facility established that its discharge plan is appropriate?

### **APPLICABLE LAW**

A residential health care facility, also referred to in the Department of Health Rules and Regulations as a nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. (PHL § 2801[2][3]; 10 NYCRR 415.2[k].)

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 Appellant'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.

Under the hearing procedures at 10 NYCRR 415.3(h)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate. Under SAPA § 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact. It is less than a preponderance of evidence but more than mere surmise, conjecture or speculation, and it constitutes a rational basis for a decision. (Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3d Dept. 1984], appeal dismissed 63 N.Y.2d 649.)

### **DISCUSSION**

The Appellant agrees with the Facility's determination that he no longer requires the services of a skilled nursing facility. However, the Appellant contends that the Facility's proposed discharge location, [REDACTED], is not appropriate for him. (T. McLean.)

The Appellant was admitted to the Facility for short-term rehabilitation on [REDACTED], 2018, subsequent to a hospitalization. (T. Pippa.) The Appellant has [REDACTED] pain, other [REDACTED] pain, and [REDACTED]. (Facility Ex. 1.) The Appellant received PT and OT services from the Facility from [REDACTED], 2018 through [REDACTED], 2018. He was discharged from the therapies because he met his goals and the program was therefore completed. (Facility Ex. 1.)

Facility Social Worker Victoria Pippa testified that the initial discharge plan for the Appellant was to discharge him to his prior residence, which is a room that he rents in an apartment in [REDACTED] (T. Pippa, McLean.) However, upon being informed by Appellant that he did not feel safe returning to his prior living arrangement due to the number of stairs between his room and the bathroom, Ms. Pippa testified that she engaged in steps to find an alternate discharge location for the Appellant. The Appellant was declined admission to multiple assisted living facilities and adult homes because of his [REDACTED] and [REDACTED]<sup>1</sup> and/or limited finances. (T. Pippa.) The Appellant met with an Ombudsman and discussed, but was not agreeable to, discharge to a motel. (T. Pippa.) The Appellant then met with "transition specialist" from [REDACTED] an Independent Living Center in [REDACTED] who suggested [REDACTED]. (T. Pippa.) The Appellant initially expressed agreement with that discharge location but soon after changed his mind. (T. Pippa.)

Ms. Pippa testified that [REDACTED] has a bed available for Appellant and is willing to accept him. (T. Pippa.) She also testified that the location is handicap accessible, provides three meals a day, and has nurses that come into the facility to assist with medication if necessary. (T. Pippa.) The bed available for Appellant is in a room occupied by one other man. (T. Pippa.)

The Appellant stated that he does not want to go to [REDACTED] because he wants his own room and he prefers to be in [REDACTED] rather than [REDACTED] where [REDACTED] is located. (T. McLean.) Appellant currently shares a room with another man at the Facility, which is located in [REDACTED] (T. Pippa, McLean.)

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<sup>1</sup> The Appellant denies a history of [REDACTED]. (T. McLean.)

The Appellant also expressed that he wants an aide provided to him so that he can be discharged to his prior residence. Although it is desirable for the Appellant to be discharged to his prior residence, the Appellant has stated he is uncomfortable returning there without the help of an aide. The Facility is encouraged to assist the Appellant in determining whether he is eligible for a home health aide. However, the Facility is not obligated under 10 NYCRR 415 to provide an aide for the Appellant so that he can return to his prior residence in lieu of finding another appropriate discharge location for the Appellant.


The Appellant acknowledges that he does not need the services of a skilled nursing facility. The Facility has explored several options for a discharge location and has involved outside resources to assist with identifying an appropriate discharge location for the Appellant. The Facility has proven that its plan to discharge the Appellant to [REDACTED] is appropriate.

**DECISION**


Wingate at Ulster has established that its discharge location is appropriate.

1. Wingate at Ulster is authorized to discharge the Appellant in accordance with its discharge plan on or after [REDACTED] 2019.
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.

DATED: March 18, 2019  
Albany, New York

  
Tina M. Champion  
Administrative Law Judge

TO:

  
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