



# 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 11, 2019

## CERTIFIED MAIL/RETURN RECEIPT

Mark Groundland  
The Grand at River Valley  
140 Main Street  
Poughkeepsie, New York 12601

[REDACTED]  
c/o Mid-Hudson Regional Hospital  
241 North Road  
Poughkeepsie, New York 12601

Barbara Stegun Phair, Esq.  
3 Dakota Drive, Suite 300  
Lake Success, New York 11042

[REDACTED]

Michael Swanwick, Assistant Vice President of Social Work  
Mid-Hudson Regional Hospital  
241 North Road  
Poughkeepsie, New York 12601

**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 GRAND AT RIVER VALLEY

to discharge him from a residential health care facility.

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**ORIGINAL**

**DECISION**

Before: Tina M. Champion  
Administrative Law Judge

Held at: Mid-Hudson Regional Hospital  
241 North Road  
Poughkeepsie, New York 12601

Date: November 26, 2019

Parties: [REDACTED]  
c/o Mid-Hudson Regional Hospital  
241 North Road  
Poughkeepsie, New York 12601  
By: Pro Se

The Grand at River Valley  
140 Main Street  
Poughkeepsie, New York 12601  
By: Barbara Stegun Phair, Esq.  
3 Dakota Drive, Suite 300  
Lake Success, New York 11042

Interested Party: Mid-Hudson Regional Hospital  
241 North Road  
Poughkeepsie, New York 12601

## JURISDICTION

By notices dated [REDACTED] 2019 and [REDACTED] 2019,<sup>1</sup> The Grand at River Valley (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [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 – Letter with Notice of Hearing and Discharge Notification Notices  
II – Letter with Rescheduling Notice

Facility Exhibits: 1 – Progress Notes  
2 – PT and OT Discharge Summaries  
3 – Progress Notes  
4 – Progress Notes  
5 – Police Incident Report  
6 – Facility Statements/Incident Report

Facility Witnesses: Amit Saxena, MD, Medical Director  
Valerie Tucci, OT, Director of Rehabilitation  
Teresa Dirac, RN, Director of Nursing  
Patricia Mosiello, LMSW, Director of Social Work

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<sup>1</sup> Patricia Mosiello, LMSW, Director of Social Work at The Grand at River Valley, testified that she believes the handwritten date of [REDACTED], 2019 on the second notice is incorrect and that notice was prepared and given to the Appellant on [REDACTED] 2019.

Appellant Exhibits: None

Appellant Witnesses: [REDACTED], Resident's [REDACTED]  
[REDACTED], Resident  
Eden Banks, Case Manager, Mental Health America

Hospital Exhibits: A – Patient Medical Records

Hospital Witnesses: Michael Swanwick, Assistant Vice President of Social Work  
Pamela Miller, RN, Case Management Supervisor

### FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2018 for rehabilitation. (Facility Exs. 1, 3-4.)

2. The Resident's diagnoses include [REDACTED] with [REDACTED],

[REDACTED]

[REDACTED]

[REDACTED]. (Facility Ex. 1.)

3. The Resident received physical therapy (PT) and occupational therapy (OT) from the Facility. He was discharged from PT on [REDACTED], 2019 and from OT on [REDACTED], 2019. The reason stated for discharge from PT is "Highest Practical Level Achieved" with a discharge destination of "Long term care setting." The reason stated for discharge from OT is "Other" with a discharge destination of "Home." (Facility Ex. 2.)

4. Staff at the Facility maintains that the Resident is independent with all activities of daily living and does not exhibit signs of difficulty with [REDACTED] unless he is aware that he is being observed. (Facility Exs. 1, 3-4; Testimony [T.] Saxena, Tucci, Dirac.)

5. Staff at the Facility has witnessed the Resident smoking in the facility on multiple occasions despite the Facility having a no smoking policy. (T. Mosiello.)

6. Staff at the Facility has smelled an odor of [REDACTED] near and in the Resident's room on [REDACTED], 2019. (Facility Ex. 3.)

7. On [REDACTED], 2019, the Facility provided the Resident with a Transfer and Discharge Notice. The reason for discharge is that "Your health or safety or the health or safety of other individuals in the facility would otherwise be endangered and all reasonable alternatives to discharge or transfer have been explored and have failed to safely address the problem." The Notice fails to state a location to where the Resident will be transferred or discharged. The effective date of the Notice is listed as December 11, 2019. (ALJ Ex. I.)

8. Staff at the Facility reported incidents on [REDACTED], 2019 and [REDACTED], 2019 wherein the Resident was [REDACTED] and [REDACTED] toward them, during which episodes he made comments about receiving a thirty-day notice to leave the Facility. (Facility Ex. 6.)

9. The security guard at the Facility reports that in the early morning hours of [REDACTED] 2019 the Resident offered him "[REDACTED]" in exchange for cigarettes. (Facility Exs. 3, 6.)

10. On [REDACTED] 2019, the Facility provided the Resident with a second Transfer and Discharge Notice. The reasons for discharge are stated as "The continued safety of individuals in the facility who would otherwise be endangered by you continued residency" and "The health of other residents in this facility who would otherwise be endangered by your continued residency." The Notice states the discharge location as the "Department of Social Services" at "[REDACTED]." There is no effective date listed on the Notice. (ALJ Ex. I.)

11. The Facility considered the Resident to have been discharged upon service of the second Notice and arranged for transport to the Department of Social Services for placement in homeless housing. It provided him with his prescriptions and states that it was prepared to

transport him with his wheelchair. The Resident refused to leave, and the Facility called the local police department. (Facility Exs. 1, 5; T. Mosiello.)

12. The Resident stated he would go to the hospital instead of the Department of Social Services, at which time the Facility provided him with a "courtesy" transport to Mid-Hudson Regional Hospital. The Resident's wheelchair was not transported with him. (Facility Exs. 1, 6; T. Mosiello, Resident.)

13. The Resident admits to smoking on Facility grounds outside of the Facility but adamantly denies smoking inside the Facility and offering drugs to the security guard. (T. Resident.)

14. The Resident has remained at Mid-Hudson Regional Hospital, without incident, since [REDACTED] 2019. (T. Swanwick.)

### **ISSUES**

Has the Facility established that its determination to discharge the Appellant is correct and 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].) Specifically, the regulations state:

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

- (1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;
- (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;
- (3) the safety of individuals in the facility is endangered; or
- (4) The health of individuals in the facility is endangered;

(10 NYCRR 415.3[h][1][i][a].)

Facilities are required to provide written notice of transfer or discharge that includes the following:

- (a) The reason for transfer or discharge;
- (b) The specific regulations that support, or the change in Federal or State law that requires, the action;
- (c) The effective date of transfer or discharge;
- (d) The location to which the resident will be transferred or discharged;
- (e) a statement that the resident has the right to appeal the action to the State Department of Health, which includes:
  - (1) an explanation of the individual's right to request an evidentiary hearing appealing the decision;
  - (2) the method by which an appeal may be obtained;
  - (3) in cases of an action based on a change in law, an explanation of the circumstances under which an appeal will be granted;
  - (4) an explanation that the resident may remain in the facility (except in cases of imminent danger) pending the appeal decision if the request for an appeal is made within 15 days of the date the resident received the notice of transfer/discharge;
  - (5) in cases of residents discharged/transferred due to imminent danger, a statement that the resident may return to the first available bed if he or she prevails at the hearing on appeal; and
  - (6) a statement that the resident may represent him or herself or use legal counsel, a relative, a friend, or other spokesman;
- (f) the name, address and telephone number of the State long term care ombudsman;

(g) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act;

(h) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(10 NYCRR 415.3[h][1][iii]-[v].)

Facilities are also required to “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.”

(10 NYCRR 415.3(h)(1)(vi).)

Under the hearing procedures at 10 NYCRR 415.3(h)(2)(iii)(b), 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 evidence and witnesses presented by the Facility as to the behaviors of the Appellant in [REDACTED] 2019 raise significant concerns about the health and safety of other individuals at the Facility. Further, although not stated by the Facility as a reason for discharge, the evidence and witnesses presented by the Facility could reasonably lead to a conclusion that the Appellant's health has improved sufficiently so the resident no longer needs the services provided by the



Facility. However, the Facility has failed to provide sufficient notice to the Appellant as required under the regulations. Specifically, the first Notice fails to state a discharge location and the second Notice fails to state an effective date for the discharge. Ms. Mosiello testified that the first Notice did not contain a location because the Facility had made multiple unsuccessful efforts to identify a discharge location (home, assisted living facilities, and nursing homes) and was still working to identify a location for the Appellant other than a homeless shelter. While the Facility's efforts to identify a discharge location other than a homeless shelter are acknowledged, they do not excuse the absence of a location on the discharge notice which is intended to put the Appellant on sufficient notice of the location to where the Appellant will be discharged. Ms. Mosiello also testified that she did not know why the second Notice did not contain an effective date but that it was understood that discharge was effective immediately. This is also insufficient under the regulations. (10 NYCRR 415.3[h][1][v]).

Even if the Notices did not have the fundamental flaws of missing required information, the discharge plan of immediate discharge to the Department of Social Services on [REDACTED] 2019 with no advance notice appears to be wholly insufficient given the circumstances in this matter. Ms. Mosiello testified that the Facility was planning to discharge the Appellant with his wheelchair, yet this item was not sent with him to the hospital despite the Facility maintaining that the Appellant was considered discharged and that his transport to the hospital was a courtesy. The Facility was unable to state the location of the wheelchair when asked at the hearing, although it did maintain that it could arrange for the Appellant to receive a wheelchair. Ms. Mosiello testified that the Appellant was discharged with prescriptions but did not testify as to any steps taken by the Facility to set up initial appointments for the Appellant or coordinate or ensure any medical care for him in the community post discharge. This is not a discharge plan that addresses how the medical needs of the resident will be met after discharge as required

pursuant to 10 NYCRR 415.3(h)(1)(vi). Further, although not determinative in this matter, Mr. Swanwick, the Assistant Vice President of Social Work at the hospital testified that the Notices did not provide for a sufficient discharge plan and that the plan in place for the Appellant by the Facility is unacceptable by hospital standards for discharge planning of patients at the hospital. This sentiment was echoed by Ms. Miller, the Case Management Supervisor at the hospital.

### **DECISION**


The Grand at River Valley has not established that appropriate notice was provided to the Appellant and that the Appellant's discharge plan was appropriate.

1. The Grand at River Valley is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the Facility, pursuant to 10 NYCRR 415.3(h)(1)(vi).
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: Albany, New York  
December 9, 2019



Tina M. Champion  
Administrative Law Judge

TO:   
c/o Mid-Hudson Regional Hospital  
241 North Road  
Poughkeepsie, New York 12601



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