

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan  
SAPA File  
BOA by scan



**Department  
of Health**

KATHY HOCHUL  
Governor

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

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

September 10, 2021

**CERTIFIED MAIL/RETURN RECEIPT**

■■■■■  
c/o Central Park Rehabilitation  
116 Martin Luther King  
East Syracuse, New York 13205

Barbara Phair, Esq  
Abrams, Fensterman  
3 Dakota Drive, Suite 300  
Lake Success, New York 11042

**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

COPY

In the Matter of  
[REDACTED] The Grand @ Utica

Administrative Law Judge's Decision

Appeal from a Nursing Home Resident Discharge pursuant to Title 10 (Health) of the Official Compilation of Codes, Rules and Regulation of the State of New York (NYCRR) §415.3(i)

Before: Administrative Law Judge (ALJ) James F. Horan  
For The Grand @ Utica (Facility): Barbara Phair, Esq.  
For Resident [REDACTED] (Appellant): Resident [REDACTED] *Pro Se*,  
With Coleen Goss, Case Worker

The Facility discharged the Appellant to public housing in a different city on the grounds that the Appellant's condition improved sufficiently so that she no longer required care in a nursing home. The Appellant requested a post-discharge appeal and an order that the Facility assist the Appellant with finding a different discharge location. After the hearing commenced, the ALJ adjourned the scheduled second hearing day due to the Appellant's hospitalization. Since that time, the Appellant has failed to respond to attempts to reschedule the hearing. The ALJ finds that the Appellant has abandoned her appeal and the ALJ dismisses this matter.

Background

The Medicaid Act at Title 42 U.S.C. §1396r(c)(2) establishes standards for resident transfer and discharges that nursing homes must meet as a prerequisite to receiving reimbursement from Medicaid, Grammer v. John Kane Regional Centers – Glen Hazel, 570 F.3d 520 (3d Cir 2009). The Act at 42 U.S.C. §1396r(e)(3) requires the States to provide an appeal process for residents to challenge the discharges and transfers. The New York State Nursing

Home Code at Title 10 NYCRR § 415.3(i) establishes the appeal process in this State, which provides nursing home residents certain rights regarding transfer or discharge. Title 10 NYCRR §415.3(i)(1)(i)(a)(2) allows involuntary discharge if a resident's health has improved sufficiently so that the resident no longer requires the services that the facility provides. Under the standards at 10 NYCRR §§ 415.3(i)(1)(vi-vii), the Facility must a) provide sufficient preparation and orientation to residents to ensure safe and orderly discharge from the Facility in the form of a discharge plan that addresses the medical needs of the resident and how these needs will be met after discharge and b) must permit the resident, their legal representative or health care agent the opportunity to participate in where the resident will reside following the discharge.

The Facility in Utica, New York provided a Discharge Notice [Facility Exhibit 1] to the Appellant on [REDACTED] 2021, listing the discharge location as a public housing apartment ([REDACTED] [REDACTED]) in [REDACTED] New York. The Appellant requested the appeal on April 6, 2021. The parties and the ALJ held a telephone conference prior to the hearing to set the hearing date and narrow the issues. The Appellant indicated that the Facility had discharged her to [REDACTED] forcefully and against her wishes. The Appellant indicated that she had no desire to return to the Facility; but stated that [REDACTED] was too big a city for the Appellant to live in comfortably. The Appellant indicated that she wanted continuing assistance to find an apartment in a small town. The ALJ limited the issue at the hearing to be whether the Facility provided the Appellant with sufficient assistance with discharge planning and whether the Facility must provide the Appellant any further assistance in relocating from [REDACTED]

The hearing on the appeal began on May 6, 2021 by WebEx videoconference. The Facility presented four witnesses that day:

- Assistant Administrator Zachary Jensen,
- Nurse Practitioner Marilyn Hubbard,

- Social Work Director Karen Manoiero-Appel and
- Social Worker Kayla Spaman.

The Facility offered four documents into the record on [REDACTED] which the ALJ received into the record:

Facility Exhibit 1-Discharge Notice,

Facility Exhibit 2-Discharge and Care Plan,

Facility Exhibit 3-Social Service Documentation and

Facility Exhibit 4-Assisted Living Evaluation and [REDACTED] Housing Certification.

Following the [REDACTED] hearing, the ALJ left the record open to receive additional information into the record. The Facility submitted two additional exhibits, which the ALJ received into the record:

Facility Exhibit 5-Signatures,

Facility Exhibit 6-Videotape of Appellant Leaving Facility.

The Appellant submitted one exhibit that the ALJ received into evidence: Discharge and Care Plan Summary with Medication Review Report [Appellant Exhibit A]. The ALJ also received four ALJ Exhibits into the record:

ALJ Exhibit I-Notice of Hearing,

ALJ Exhibit II-[REDACTED] 2021 Email,

ALJ Exhibit III-[REDACTED] 2021 Email and

ALJ Exhibit IV-[REDACTED] 2021 Letter ALJ to Parties.

The record also included a videotape recording from the hearing on compact disc (CD). That CD also contains the videotape in evidence as Facility Exhibit 6. References to statements from the hearing videotape will reference the time on the CD at which the statement occurs (*e.g.* "CD at 12:40" means that the statement occurred at 12 minutes and 40 seconds into the recording).

After hearing the Facility's case, the ALJ determined to leave the record open to receive additional exhibits and scheduled a second hearing day for additional testimony on July 1, 2021. Prior to that date, Ms. Goss informed the ALJ and the Facility that the Appellant had been hospitalized [ALJ Exhibit II]. The ALJ adjourned the second hearing day and asked Ms. Goss to keep the ALJ and the Facility informed about the Appellant's situation. Ms. Goss informed the ALJ and the Facility on [REDACTED] 2021 that the Appellant had been transferred to [REDACTED] [ALJ Exhibit II]. Staff from the Bureau of Adjudication attempted to contact the Appellant thereafter to determine if she wished to continue with the hearing and when she would be available to do so. The Staff received no response. On August 10, 2021, the ALJ sent a letter to the parties indicating that the Appellant would have until September 7, 2021 to contact the Bureau by mail or telephone to indicate whether the Appellant wished to continue with the hearing. The Bureau received no response to the letter. The ALJ finds that the Appellant has abandoned this appeal. The ALJ will decide the matter on the evidence already in the record.

#### Conclusions

Under the hearing procedures at §415.3(i)(2)(iii)(b), the Facility bears the burden to prove a discharge necessary and appropriate. The ALJ finds that the Facility has established that it assisted the Appellant with the discharge process, that the Appellant applied willingly for the move to public housing in [REDACTED] and that the Appellant left the Facility voluntarily to go to [REDACTED]. The testimony by Ms. Appel and Ms. Spaman proved that Social Services at the Facility had assisted the Appellant in the discharge process and had assisted the Appellant with the application to the [REDACTED] Housing Authority. Facility Exhibit 4 included the Application with signatures. Ms. Appel and Ms. Spaman testified that they saw the Appellant sign the



Application and that the Appellant's signature appeared on Exhibit 4. Ms. Spaman testified that she accompanied the Appellant to the van at the time of the Appellant's discharge and that the Appellant left voluntarily. Mr. Jensen testified that he viewed the Facility tape of the Appellant leaving the Facility and that the tape showed the Appellant leaving voluntarily.

Appellant Exhibit A is the sole evidence from the Appellant in the record. That Exhibit contains records from the Facility, some of which the Facility offered into the record in the Facility's Exhibits. The Appellant did not testify on the first hearing day. She did make accusations in her opening statement and in response to testimony from the Facility's witnesses. Nothing in Exhibit A supported the Appellant's accusations

The Appellant alleged that she was removed from the Facility forcibly and was pushed [CD at 50:21]. A videotape from the Facility shows the Appellant leaving the Facility voluntarily with Ms. Spaman accompanying the Appellant, in just the way Ms. Spaman described in her testimony [Facility Exhibit 6; CD at 49:08]. The Appellant claimed she never wanted to go to ██████████ but the Facility presented the signed Application to the ██████████ Housing Authority [Facility Exhibit 4]. Ms. Appel and Ms. Spaman testified to having witnessed the Appellant sign the Application. When the Appellant viewed the Application during the hearing, she indicated she couldn't tell if some of the signatures belong to her and she also appeared disoriented as to time [CD at 38:59]. At one other point, the Appellant stated that she did not read or write [CD at 45:50]. The Facility also offered into evidence Facility Exhibit 5, which contained copies of several documents the Appellant signed for the Facility at various times. The ALJ finds the signatures on Exhibit 5 similar to those on the Housing Authority Certification [Facility Exhibit 4]. The ALJ finds the Appellant's accusations without merit.

The ALJ concludes that the Facility fulfilled its obligations to assist the Appellant in the discharge process pursuant to 10 NYCRR §§ 415.3(i)(1)(vi-vii), that the Appellant applied

willingly for the public housing in [REDACTED] to which the Facility discharged the Appellant and that the Appellant left the Facility voluntarily at the time of her discharge.

ORDER

NOW; after considering the request for Hearing, the testimony and the documents in evidence, the ALJ issues the following Order:

The ALJ dismisses the Discharge Notice.

Dated: Menands, New York  
September 10, 2021

A handwritten signature in cursive script, appearing to read "J. Horan", is written over a horizontal line.

James F. Horan  
Administrative Law Judge



To: Barbara Phair, Esq,  
Abrams, Fensterman  
3 Dakota Drive, Suite 300  
Lake Success, NY 11042

Resident [REDACTED]  
c/o Central Park Rehab  
116 Martin Luther King  
East Syracuse, NY 13205