



Office for People With Developmental Disabilities

KATHY HOCHUL
Governor

KERRI E. NEIFELD
Commissioner

ROGER BEARDEN, J.D.
Executive Deputy Commissioner

May 11, 2022

**Via Certified Mail and
and Electronic Mail**

Patrick Dollard, Executive Director
Center for Discovery Services, Inc.

Edward Sweeney, President, Board of Directors

Re: Notification of Intent to Impose a Fine

Dear Mr. Dollard and Mr. Sweeney:

This letter constitutes formal notification that the New York State Office for People With Developmental Disabilities (“OPWDD”) is imposing a fine in the amount of \$10,000 on your agency, Center for Discovery, Inc. (“CFD”).

Pursuant to Mental Hygiene Law section 16.17(g), the Commissioner may impose a fine upon a finding that the holder of an operating certificate has failed to comply with the terms of the operating certificate or with the provisions of any applicable statute, rule or regulation.

A resident (JG) of a CFD Individualized Residential Alternative (“IRA”) was admitted to Garnet Medical Center (“Garnet”) on or about November 17, 2021, due to certain acute medical conditions. On or about December 15, 2021, Garnet determined that JG’s acute conditions had been resolved and that JG no longer required treatment in the hospital. Garnet advised CFD that JG was ready for discharge from Garnet. CFD nonetheless refused to return him to his home of fifteen (15) years.

By letter dated December 23, 2021, Director Joan Volpe reiterated to CFD that Garnet had determined JG to be ready for discharge. Ms. Volpe’s letter dated December 23, 2021 also enclosed OPWDD’s September 9, 2020 memorandum entitled “Due Process and Inappropriate Discharges from Residential Programs and Services.” This memorandum described the requirements set forth in 14 NYCRR 633.12 and specifically defined an “inappropriate discharge” to include situations where a provider refuses to allow an individual to return to their residence after a period of hospitalization without following 633.12’s due process procedures. CFD’s failure to return JG to his home after he was ready for discharge and without giving him the due process protections established by 633.12 clearly amounted to an inappropriate discharge.

CFD only agreed to admit JG back to his residence after a court ordered CFD to immediately return JG to his residence and after CFD had exhausted all legal means to stay this order. He was not returned home until February 28, 2022, having spent more than 2 months languishing in the hospital unnecessarily. CFD's failure to promptly return JG to his residence or to provide him with the necessary due process under 633.12 is a violation of OPWDD regulations and the terms of CFD's operating certificate.

You have the right to an administrative hearing to appeal the imposition of this fine. You also have the right to be represented by an attorney at such hearing. If you are requesting a hearing, you have **30 days** from service of notice of this proposed action to submit your request. Your request must include a declaration of the issues alleged to be involved and documentation of the agency's position as to each identified issue.

Send your request to:

Kerri Neifeld, Commissioner
NYS Office for People With Developmental Disabilities
44 Holland Avenue
Albany, NY 12229

In accordance with 14 NYCRR 602.5, your written request for the hearing must include a copy of this letter and a declaration of the issues alleged to be involved and documentation of your position of each issue. If you decide not to request a hearing, please remit payment of your fine immediately. Payment should be made within 30 days of receipt of this notification. Payment must be made by check payable to OPWDD and be for the total amount of the fine. Partial payment will not be accepted without written authorization from OPWDD. You may send your payment to:

Eileen Haynes, General Counsel
NYS Office for People With Developmental Disabilities
Counsel's Office-3rd Floor
44 Holland Avenue
Albany, NY 12229

Finally, please be aware that the imposition of this fine does not preclude OPWDD from taking further adverse action if your agency fails to maintain compliance with OPWDD regulations.

Sincerely,



Tammy Devine
Acting Deputy Commissioner
Division of Quality Improvement

cc:
Board of Directors
Kerri Neifeld, Commissioner
Roger Bearden, Executive Deputy Commissioner
Brian O'Donnell, Statewide Director, DQI, Bureau of Program Certification
Barbara Van Vechten, Statewide Director, Incident Management and Continuous Quality Improvement Units
Karisa Capone, Director, Incident Management Unit
Richard Cicero, Director of Internal Controls
Abiba Kindo, Deputy Commissioner, Service Access, Program Implementation & Stakeholder Support
Ann Marie Peterson, Associate Commissioner, Service Access, Program Implementation & Stakeholder Support
Eileen Haynes, Acting General Counsel
Joanne Howard, Director, Fiscal Reporting and Data Analysis
Earl Jefferson, Director, Central Operations
Joan Volpe, Regional Director, Region 3
Josh Olsen, Deputy Counsel, Counsel's Office