

cc: DOH.sm.DCAppeals@health.ny.gov by scan
SAPA File
BOA by scan



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Commissioner

JOHANNE E. MORNE, M.S.
Executive Deputy Commissioner

February 28, 2024

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Bayshore Motor Inn
300 Bayshore Road, Room [REDACTED]
Bayshore, New York 11706

Ahmed Joudah, Administrator
Surge Rehab & Nursing Center
49 Oakcrest Avenue
Middle Island, New York 11953

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,

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: nm
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

Surge Rehabilitation and Nursing

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER HEARING

#DA24-6256

Hearing Before: Kendra Vergason
Administrative Law Judge

Held at: New York State Department of Health
by videoconference

Hearing Date: February 8, 15 and 21, 2024

Parties: Surge Rehabilitation and Nursing
49 Oakcrest Avenue
Middle Island, New York 11953
By: Ahmed Joudah, Administrator
AJoudah@surgerehab.com

[REDACTED]
Pro se

JURISDICTION

By notice dated ██████████ 2024, Surge Rehabilitation and Nursing (Respondent), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge ██████████ (Appellant) effective ██████████, 2024. On ██████████, 2024, after being discharged, the Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

Respondent witnesses:	Kimberly Butler, Director of Social Work
Respondent exhibits:	1-6
Appellant witnesses:	None
Appellant exhibits:	None
ALJ exhibits:	I- II

A digital recording of the hearing was made (2/8/24 – 4min; 2/15/24 – 15min; 2/21/24 – 19min.)

DISCUSSION

Department regulations at 10 NYCRR § 415.3(i) describe the transfer and discharge rights of residential health care facility residents. The Appellant was admitted to the Respondent facility on ██████████ 2023, from ██████████ Hospital for rehabilitation with ██████████ of the ██████████ and ██████████ (Exhibit 2.) By notice dated ██████████ 2024, the Respondent determined to discharge the Appellant, effective ██████████ 2024, because the Appellant's health had improved. The notice advised that the Appellant would be discharged to ██████████ at ██████████ ██████████. (Exhibit ALJ I.) The Appellant selected this discharge location and provided the address to the facility's social work staff after rejecting all proposed alternative locations. (T. Butler.)

The Appellant's clinical record contains documentation from the Appellant's physician and interdisciplinary care team that the Appellant's condition has improved to the extent that he no longer needs the services of the facility, and any ongoing or future care needs can be met in the community. The Appellant is medically stable, has completed all prescribed skilled therapies and is independent with activities of daily living. (Exhibits 2 and 5.) He was provided with 30 days

supply of medications and referrals to his primary physician and [REDACTED] in the community for any follow-up care. (Exhibit 5.)

Prior to the issuance of the discharge notice, the Respondent's social work staff engaged in many discussions with the Appellant regarding alternative discharge arrangements. The Appellant has no available home in the community and rejected placement at an assisted living facility or any alternative housing options available through Department of Social Services. (T. Butler.)

The Appellant was discharged to the [REDACTED] on [REDACTED] in accordance with his discharge plan. On [REDACTED] 2024, the Appellant contacted the Department to appeal the discharge and provided an address for receiving correspondence and his cell phone number for phone communication – he did not provide any other method for communication. Copies of the Notice of Hearing and rescheduling notice were sent to the provided address. (Exhibits I and II.) The Department's Bureau of Adjudication also attempted to reach the Appellant at the provided phone number, but each call was unanswered. Although duly notified of the time and place of the hearing, the Appellant did not appear for the scheduled hearing, either in person or through a representative, and did not request an adjournment of the scheduled hearing. (Exhibit I.)

The facility has the burden of proving that the discharge is necessary and the discharge plan appropriate. 10 NYCRR § 415.3(i)(2)(iii)(b). The Respondent has established that the Appellant is no longer in need of nursing home services; and that the discharge plan and location that he selected, are appropriate.

The appeal is denied. The Respondent's discharge of the Appellant in accordance with the [REDACTED] 2024 discharge notice is authorized.

Dated: February 28, 2024
Rochester, New York


Kendra Vergason
Administrative Law Judge