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# Department of Health

**KATHY HOCHUL**  
Governor

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

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

February 9, 2024

**CERTIFIED MAIL/RETURN RECEIPT**

██████████  
c/o Ross Center for Health and Rehabilitation  
839 Suffolk Avenue  
Brentwood, New York 11717

Peretz Stein, NHA  
Ross Center for Health and Rehabilitation  
839 Suffolk Avenue  
Brentwood, New York 11717

**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,

Natalie J. Bordeaux  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB: cmg  
Enclosure

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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COPY

In the Matter of an Appeal, pursuant to  
10 NYCRR 415.3, by

[REDACTED]

DECISION

Appellant,

from a determination by

ROSS CENTER FOR HEALTH & REHABILITATION,

Respondent,

to discharge him from a residential health care facility.

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Before: Tina M. Champion  
Administrative Law Judge

Held at: Videoconference via WebEx

Date: February 9, 2024

Parties: [REDACTED]  
c/o Ross Center for Health & Rehabilitation  
839 Suffolk Avenue  
Brentwood, New York 11717  
By: Pro Se

Ross Center for Health & Rehabilitation  
839 Suffolk Avenue  
Brentwood, New York 11717  
By: Peretz Stein, Nursing Home Administrator

## JURISDICTION

By notice dated [REDACTED], 2024, Ross Center for Health & Rehabilitation (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(i).

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. A digital recording was made of the proceeding.

## HEARING RECORD

ALJ Exhibit:            1 – Letter with Notice of Hearing and Transfer/Discharge Notice [REDACTED]/24)

Facility Exhibits:     1 – PA Note  
                              2 – Social Work Packet  
                              3 – Therapy Notes  
                              4 – Out On Pass Packet  
                              5 – Resident Face Sheet

Appellant Exhibits:   None

Facility Witnesses:    Patricia Schill, Assistant Director of Nursing  
                                  Marissa Stein, Director of Social Work  
                                  Jill Gotfried, Physical Therapist

Appellant Witness:    [REDACTED], Appellant<sup>1</sup>

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<sup>1</sup> The Appellant appeared by audio only, using his personal smartphone. He claimed he was unable to connect by video due to a broken camera. He was offered, and rejected, a sanitized Facility laptop so that he could be seen on video. The Appellant's statements are not sworn to or affirmed.

### FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2023, for short-term rehabilitation following a [REDACTED] of his [REDACTED]. (Exhibit [Ex.] 5.)
2. The Appellant received physical therapy (PT) at the Facility from [REDACTED] 2023, through [REDACTED] 2023. The Appellant was discharged from PT, having achieved independent levels for ambulating on even and uneven surfaces, climbing steps, and transferring. (Facility Ex. 3; Testimony [T.] Gotfried.)
3. The Appellant is independent with all his activities of daily living (ADLs). (Facility Exs. 1, 3; T. Schill, Gotfried.)
4. The Appellant receives no skilled nursing services at the Facility and has no skilled nursing needs. (Facility Ex. 1; T. Schill.)
5. The Appellant is medically stable to be discharged to the community. (Facility Ex. 1.)
6. The Appellant has left the Facility numerous times, with various family members and friends, under an Out On Pass Agreement. (Facility Ex. 4; T. Stein.)
7. On [REDACTED], 2024, the Facility issued a Transfer/Discharge Notice to the Appellant which proposed discharge to [REDACTED], an assisted living facility in [REDACTED] [REDACTED]. (ALJ Ex. I.)
8. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant's health has improved sufficiently such that the Appellant no longer requires the services of the Facility. (ALJ Ex. I.)
9. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.
10. The Appellant has remained at the Facility during the pendency of the appeal.

## 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[i][1].)

The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415(i)(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.

A Facility must ensure complete documentation in the resident's clinical record when a resident is discharged. (10 NYCRR 415.3[i][1][ii].)

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[i][1][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[i][1][vi].)

Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate.

## DISCUSSION

The Appellant is a [REDACTED] year-old male who was admitted to the Facility on [REDACTED], 2023. He received PT during his stay. The Appellant's PT was discontinued on [REDACTED], 2023, with the Appellant having achieved independence with mobility and ADLs. Patricia Schill, Assistant Director of Nursing, and Jill Gotfried, Physical Therapist, both testified that the Appellant is independent with his ambulation and ADLs. Ms. Schill and Ms. Gotfried testified that the Appellant has left the Facility on numerous occasions since his admission. The Facility offered into evidence documentation by Pam Cornacchia, PA-C, stating that the Appellant is medically stable, does not need skilled nursing, and can be safely discharged to the community. (Facility Ex. 1.)

The Appellant disputes that discharge is appropriate. He acknowledges that he has improved since his admission to the Facility but maintains that he needs at least six more weeks of therapy for his [REDACTED]. The Appellant disputes that he is independent since he has only been out on pass with a responsible party rather than by himself, and he argues that his leaving the Facility 15 times in 90 days is insufficient to classify him as independent.

The Facility has met its burden to show that the Appellant's health has improved sufficiently such that he no longer needs the services provided by the Facility, necessitating discharge in accordance with 10 NYCRR 415(i)(1)(i)(a)(2). All credible evidence supports that the Appellant is functioning at an independent level and that he has no skilled nursing needs or other needs that would make discharge from the Facility to the community inappropriate.

Marissa Stein, Director of Social Work, testified that she explored several discharge options for the Appellant, including an apartment he was living in prior to his admission to the Facility. She testified that the Appellant has declined all proposed discharge locations with family, with friends, and at his prior apartment. Ms. Stein testified that the Appellant has been evaluated,

in person and/or on paper, by various assisted living facilities and that [REDACTED] [REDACTED] has accepted the Appellant. Ms. Stein further stated that [REDACTED] has a bed available for the Appellant and will hold the bed open until the Appellant's proposed discharge date of [REDACTED] 2024.

The Appellant is not agreeable to discharge to [REDACTED]. He vehemently disputes that he was evaluated by anyone from [REDACTED]. He also states that [REDACTED] is an unacceptable environment for him because he believes residents there to have "mental issues," believes the facility is covered with urine and feces, and believes that there is no privacy and he will be subjected to others stealing from him. The Appellant states that the standard of living at [REDACTED] is not the same as where he came from prior to his admission to the Facility or at the Facility, and that he should be placed in a comparable environment. Despite his argument, the Appellant also claims that he would prefer to go to a shelter over [REDACTED] and claims that while at the Facility he has been subjected to losing heat in his room, flooding in his room, and having no privacy due to a staff member entering his room while he was [REDACTED]. The Appellant's arguments are unpersuasive.

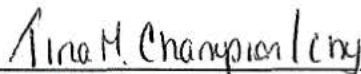
The Facility has shown that discharge is necessary. It has also shown that the proposed discharge location, [REDACTED], is available to the Appellant and is an appropriate placement given the Appellant's lack of skilled nursing needs, independence with ambulation and ADLs, and medical stability.

**DECISION**

Ross Center for Health & Rehabilitation has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Ross Center for Health & Rehabilitation is authorized to discharge the Appellant in accordance with its [REDACTED] 2024, Transfer/Discharge Notice.
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  
February 9, 2024

  
\_\_\_\_\_  
Tina M. Champion  
Administrative Law Judge

TO: [REDACTED]  
c/o Ross Center for Health & Rehabilitation  
839 Suffolk Avenue  
Brentwood, New York 11717  
[REDACTED]

Peretz Stein, Nursing Home Administrator  
Ross Center for Health & Rehabilitation  
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