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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

March 5, 2024

**CERTIFIED MAIL/RETURN RECEIPT**

██████████  
c/o Schaffer Extended Care Center  
16 Guion Place  
New Rochelle, New York 10802

Sherrita Alexander, LNHA  
Schaffer Extended Care Center  
16 Guion Place  
New Rochelle, New York 10802

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

[REDACTED]

Appellant,

from a determination by

**Schaffer Extended Care Center,**

Respondent,

to discharge him from a residential  
health care facility.

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COPY

DECISION  
AFTER  
HEARING

#DA24-6269

Hearing before: Eric James Mantey  
Administrative Law Judge  
February 28, 2024  
By WebEx Videoconference

Parties: Schaffer Extended Care Center  
16 Guion Place  
New Rochelle, New York 10802

By: *pro se*

[REDACTED]

c/o Schaffer Extended Care Center  
16 Guion Place  
New Rochelle, New York 10802

By: *pro se*

### JURISDICTION

By notice dated [REDACTED] 2024, Schaffer Extended Care Center, (the Respondent), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge [REDACTED] (the Appellant) from care and treatment at its nursing home. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) Section 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); and the New York State Administrative Procedure Act (SAPA). Evidence was received and witnesses were examined. A digital recording of the hearing was made. (0:38:01.)

### HEARING RECORD

#### ALJ Exhibits:

- I. Notice of Hearing and Notice of Discharge/Transfer.

#### Respondent's Exhibits:

1. Resident Face Sheet.
2. Physician's Case Note.
3. [REDACTED] 2024 Letter.

#### Appellant's Exhibit:

- A. Housing Voucher.
- B. Handwritten Statement.

#### Respondent's Witnesses:

1. Peter Prizel, Social Worker.
2. Jacqueline Reid, Manager.

#### Appellant's Witnesses:

None.

## ISSUES

Has the Respondent established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

## FINDINGS OF FACT

1. The Respondent is a residential health care facility, or nursing home, within the meaning of PHL § 2801.2 and 10 NYCRR 415.2(k), located in New Rochelle, New York.

2. The Appellant is a [REDACTED]-year-old male who was initially admitted to the Respondent's facility on [REDACTED] 2023, to get rehabilitation with [REDACTED] and [REDACTED] pain accompanied by [REDACTED] (Respondent Exhibits 1 and 3.) After several returns to and from a hospital, he was last re-admitted to the facility on [REDACTED] 2023. (Respondent Exhibits 1 and 3.)

3. The Appellant's treating physician at the Respondent's facility has determined and documented in the facility record that the Appellant is not in need of nursing home care and that discharge to a shelter in the community is medically appropriate. (Respondent Exhibit 2.)

4. The Appellant did [REDACTED] at a fellow resident on [REDACTED] 2024. (Respondent Exhibit 2 and 3; Appellant Exhibit B; T. Appellant; 0:18.45.)

5. By notice dated [REDACTED] 2024, the Respondent advised the Appellant of its determination to discharge him on [REDACTED] 2024, on the grounds that his health has improved sufficiently so he no longer needs the services provided by the Respondent's facility; and on the grounds that the health and safety of individuals in the facility has been endangered. (ALJ Exhibit I.)

6. The discharge notice advised the Appellant he would be discharged to a shelter located at [REDACTED] (ALJ Exhibit I.)

7. The Appellant remains at the Respondent's facility pending the outcome of this hearing.

### APPLICABLE LAW

A residential health care facility, or nursing home, is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital. PHL § 2801; 10 NYCRR 415.2(k). Transfer and discharge rights of nursing home residents have been codified in PHL § 2803-z and set forth at 10 NYCRR 415.3(i) which provides, in pertinent part, that the facility shall:

(1) (i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility:

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

- ...
- (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; or
  - (3) the safety of individuals in the facility is endangered; or
  - (4) the health of individuals in the facility is endangered.

...

(vi) 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, and provide a discharge summary pursuant to section 415.11(d) of this Title. . .

The facility shall ensure complete documentation in the resident's clinical record by the resident's physician when discharge is on grounds that the resident no longer needs nursing home care. When alleging that a transfer or discharge is appropriate because the safety or health of individuals in the facility is endangered, the necessity of the discharge must be documented in the resident's clinical record by a physician. 10 NYCRR 415.3(i)(1)(ii)(a)&(b); 42 C.F.R. § 483.15(c)(2)(ii)(A)&(B).

The Respondent has the burden of proving that the discharge is necessary and that the discharge plan is appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

## DISCUSSION

The Respondent determined to discharge the Appellant on the grounds that he is no longer in need of nursing home care. (Respondent Exhibit 2 and 3.) The proposed discharge is also based on an allegation that the Appellant endangers the health and safety of other residents due to having one [REDACTED] with another resident. (Respondent Exhibit 2 and 3.)

With regard to the Respondent's proposed discharge on grounds of endangerment, a progress note documents that the Appellant had a [REDACTED] with another resident. (Respondent Exhibit 2.) The progress note is vague regarding the [REDACTED] and fails to state any harms or dangers that the [REDACTED] caused or could have caused. The Appellant admitted to [REDACTED] with his roommate regarding an alleged [REDACTED] (T. Appellant; 0:15:35 – 0:18:57.) The Appellant specified he was in the hallway [REDACTED] at his roommate who was in his own room. (T. Appellant; 0:18:45.) It was an [REDACTED] described by Mr. Prizel as [REDACTED] and containing [REDACTED] (T. Prizel; 0:6:07.) This is the single instance of an [REDACTED] in which the Respondent was involved.

Approaching staff to inform of a [REDACTED] and having staff investigate the allegation would have been the appropriate course of action rather than [REDACTED] in a common area of the facility which could conceivably cause other residents to feel distress and fearfulness. However, a nursing home can and should be expected to handle such inappropriate behaviors. The Respondent's evidence, which does not include documentation of the alleged endangerment by a physician, as is required, fails to establish that the Appellant is a danger to the health or safety of individuals in the Respondent's facility.

The necessity of the Appellant's discharge is documented in the Appellant's medical record by his physician in accordance with 10 NYCRR 415.3(i)(1)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(A). Specifically, a progress note by the facility's treating physician states the Appellant's discharge is necessary because the Appellant is medically stable and no longer requiring nursing home care. (Respondent Exhibit 2.) A Respondent representative also testified that the Appellant's facility care team agrees

he is "independent and can be discharged" and is "medically cleared" by a physician to be discharged. (T. Ms. Reid; 0:16:27 – 0:16:42.)

The Appellant admits to going out on day passes and to ambulating on his own with the assistance of a walker. (T. Appellant; 0:19:34 – 0:19:48, 0:21:35.) However, the Appellant protests the discharge, stating he [REDACTED] that his [REDACTED] (T. Appellant; 0:20:56 – 0:21:28.) Yet, he admits he can maintain his own "place" (referring to an apartment) with minimal assistance from a home health aide. (T. Appellant; 0:20:46 and 0:24:28.)

A [REDACTED] is not a valid basis to stay in a nursing home. When a nursing home resident's health has improved to the point at which it is no longer medically necessary to remain in a nursing home, the resident can be discharged. Such is the case with the Appellant.

It appears the Appellant does want to live in the community, but just not in a shelter. This is understandable. A nursing home is required to use its best efforts to secure appropriate placement other than a shelter. PHL 2803-z(1)(b). The Respondent has complied with this obligation. The Appellant has the right to participate in deciding where he will reside after discharge. 10 NYCRR 415.3(1)(vii). He has been afforded this right, including being offered other housing options, such as assisted living. He denied that option as he prefers to remain in a nursing facility or to live in his own apartment. (Respondent Exhibit 3, p. 2.) At the Appellant's request, the Respondent made referrals to ten nursing homes, but they all denied him admission. Regarding an apartment, the Respondent worked with the [REDACTED] program through which the Appellant could get an apartment, but funding for the program was placed on hold. He does not want to live with family in [REDACTED] because he would lose Medicaid for thirty days. (Respondent Exhibit 3, p. 1.) The Appellant has not identified any other discharge plans for the Respondent to explore.

The Respondent has documented an appropriate discharge plan by which the Appellant would be transported to a local shelter, located at [REDACTED] [REDACTED] with medications necessary to maintain health, along with a doctor's referral. (T. Prizel; 0:7:29, 0:13:41 – 0:14:23; Respondent Exhibit 3.)

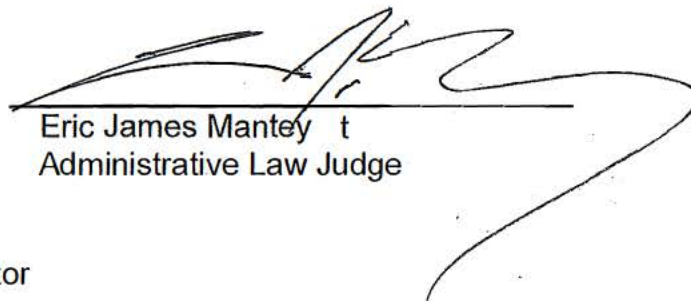
**DECISION**

The Respondent established that its determination to discharge the Appellant on grounds he is no longer in need of nursing home care is correct. The Respondent established that its discharge plan is appropriate.

1. Schaffer Extended Care Center is authorized to discharge the Appellant in accordance with the discharge plan.
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: Menands, New York

March 5, 2024



Eric James Mantey t  
Administrative Law Judge

To: Sherrita Alexander, Administrator  
Schaffer Extended Care Center  
16 Guion Place  
New Rochelle, New York 10802

██████████  
c/o Schaffer Extended Care Center  
16 Guion Place  
New Rochelle, New York 10802