

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

April 24, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Dr. Susan Smith McKinney Nursing
and Rehabilitation
594 Albany Avenue
Brooklyn, New York 11203

Kamal Latchman, DSW
Dr. Susan Smith McKinney Nursing
and Rehabilitation
594 Albany Avenue
Brooklyn, New York 11203

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

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

██████████,

Appellant,

from a determination by

**Dr. Susan Smith McKinney Nursing
and Rehabilitation Center,**

Respondent,

to discharge him from a residential
health care facility.

CONFIRMED

**DECISION
AFTER
HEARING**

#DA24-6310

Hearing Before: Kendra Vergason
Administrative Law Judge

Hearing Date: March 7, 21, April 11 and 18, 2024
by Webex videoconference

Parties: ██████████, Appellant
c/o Dr. Susan Smith McKinney Nursing and Rehabilitation Center
594 Albany Avenue
Brooklyn, New York 11203

Dr. Susan Smith McKinney Nursing and Rehabilitation Center
594 Albany Avenue
Brooklyn, New York 11203
Kamal.Latchman@nychhc.org

JURISDICTION

By notice dated ██████████, 2024, Dr. Susan Smith McKinney Nursing and Rehabilitation Center (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge ██████████ (Appellant) from the Facility on the grounds that the Appellant's "health has been significantly stabilized and no longer needs the services of the facility." (ALJ I.) The Appellant appealed the discharge determination pursuant to Department of Health regulations at 10 NYCRR 415.3(i).

The hearing was held in accordance with Part 415 of 10 NYCRR; Part 483 of Title 42 of the United States Code of Federal Regulations (CFR); and the New York State Administrative Procedure Act (SAPA).

HEARING RECORD

The Facility presented the testimony of Ralph Beaubrun, Nurse Practitioner (NP); Kamal Latchman, Director of Social Work; Debra Martin, RN; and Karen Williams, Social Worker. The Appellant was present at the March 7th hearing date, questioned the Facility's witnesses and provided statements on his own behalf.

On mutual request, an adjournment for continuance was granted to March 21, 2024. Karen Williams appeared for the Facility on the 21st to request an additional adjournment because of a scheduling issue at the Facility and because the Appellant was ill and not able to attend. The hearing was adjourned to April 11, 2024, at which the Facility appeared and requested an additional adjournment because the Appellant was unable to attend due to illness. The hearing was adjourned to April 18, 2024, at which the Appellant was again not present having informed his caregivers at the Facility that he

- (3) the safety of individuals in the facility is endangered; or
 - (4) the health of individuals in the facility is endangered.
- 10 NYCRR 415.3(i)(1)

Prior to initiating the transfer or discharge of a resident, the facility shall use its best efforts to secure appropriate placement or a residential arrangement for the resident, other than temporary housing assistance such as a shelter for adults. PHL § 2803-z(1)(b).

The facility shall ensure complete documentation in the resident's clinical record. The documentation must be made by the resident's physician when the basis for initiating discharge is that the resident no longer needs nursing home care. 10 NYCRR 415.3(i)(1)(ii)(a); 42 CFR 483.15(c)(2)(ii)(A).

The burden is on the facility to prove that discharge is necessary, and the discharge plan is appropriate. 10 NYCRR 415.3(i)(2)(ii); SAPA § 306(1).

DISCUSSION

There is a regulatory obligation on the Facility to ensure complete documentation in the clinical record, by the resident's physician, when discharge is on grounds that the resident no longer needs the services provided by the facility. The Facility failed to demonstrate compliance with this requirement. The Facility did not produce or submit any documentation at the hearing; let alone clinical record documentation by the Appellant's physician that discharge is appropriate. Despite being asked numerous times if it had documentation to submit as evidence and being given numerous opportunities to do so over the four scheduled hearing dates, the Facility asserted it did not have any and confirmed it would rely on the testimony of its witnesses. (T Williams.)

The Facility failed to establish valid grounds for discharge and did not meet its burden to prove that discharge is necessary. It is therefore unnecessary to review the

appropriateness of the discharge plan. Any future determination by the Facility to discharge the Appellant will require a new transfer/discharge notice be issued to the Appellant in accordance with 10 NYCRR 415.3(i).

DECISION

1. Dr. Susan Smith McKinney Nursing and Rehabilitation Center failed to prove that discharge is necessary and the discharge plan is appropriate.
2. The Appellant may not be discharged pursuant to the notice dated ██████████ 2024.

DATED: Rochester, New York
April 23, 2024


Kendra Vergason
Administrative Law Judge