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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

May 8, 2024

**CERTIFIED MAIL/RETURN RECEIPT**

[REDACTED]  
c/o Yonkers Center for Nursing & Rehabilitation  
115 South Broadway  
Yonkers, New York 10701

Mendi Brodie, NHA  
Yonkers Center for Nursing & Rehabilitation  
115 South Broadway  
Yonkers, New York 10701

[REDACTED]

**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*

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

[REDACTED]

Appellant,

from a determination by

**Yonkers Center for Nursing and  
Rehabilitation,**

Respondent,

to discharge him from a residential  
health care facility.

COPY

**DECISION  
AFTER  
HEARING**

#DA24-6343

Hearing before: Eric J. Mantey  
Administrative Law Judge  
May 2, 2024  
By WebEx Videoconference

Parties: Yonkers Center for Nursing and Rehabilitation  
115 South Broadway  
Yonkers, New York 10701

By: Mendi Brodie, Administrator

[REDACTED]

c/o Yonkers Center for Nursing and Rehabilitation  
115 South Broadway  
Yonkers, New York 10701

By: [REDACTED]

## JURISDICTION

By notice dated [REDACTED] 2024, Yonkers Center for Nursing and Rehabilitation, (Respondent), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge [REDACTED] (Appellant) from care and treatment at its nursing home. The Appellant appealed the determination to the New York State Department of Health pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) Section 415.3(i).

The hearing was held via Webex videoconference and in accordance with 10 NYCRR § 415.3, 42 CFR § 483.15, Part 51 of 10 NYCRR, and the New York State Administrative Procedure Act. Evidence was received and witnesses were examined. A digital recording of the hearing was made. (Length - 01:40:51.)

## HEARING RECORD

### ALJ Exhibits:

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

### Respondent Exhibits:

1. [REDACTED], 2024, Progress Note
2. Current Functional Progress Report

### Appellant Exhibits:

- A. [REDACTED] 2024, Progress Note
- B. Treatment Goal Record
- C. [REDACTED], 2024, Progress Note
- D. Email Record

### Respondent Witnesses:

1. Mendi Brodie, Administrator
2. Joneb Alday, Director of Nursing
3. Lana Zarkhi, Regional Director of Social Services, Infinite Care
4. Lakeesha Perera, Director of Rehabilitation

### Appellant Witnesses:

1. [REDACTED]
2. [REDACTED]

### 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 Yonkers, New York.

2. The Appellant is a [REDACTED]-year-old male who was initially admitted to the facility on [REDACTED] 2022.

3. On [REDACTED] 2024, the Respondent issued a Discharge Notice to the Appellant indicating he would be discharged from the facility to [REDACTED] [REDACTED] on the grounds that his health had improved sufficiently so that he no longer needs nursing home services and that the safety of individuals at the facility would be endangered if he were to remain there. (ALJ Exhibit [Ex.] I.; T. Brodie, 00:27:33.)

4. The Appellant is independent in his activities of daily living (ADL). (Testimony [T.] Alday, 00:58:10 – 00:59:25.)

5. The Appellant's progress in physical and occupational therapy has prepared him to transition to an assisted living facility. (Respondent Ex. 2.)

6. The Appellant's treating physician documented in a progress note effective [REDACTED] 2024, that the Appellant is deemed safe to be discharged to assisted living. (Respondent Ex. 1.)

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

### ISSUES

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

## 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.

...

(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

Regarding the proposed discharge due to alleged endangerment, the Respondent did not offer any evidence that the discharge for that reason was documented in the resident's clinical record by a physician. Therefore, the discharge on that ground is not affirmed. However, the Respondent did meet its burden showing that the Appellant's health has improved sufficiently so that he no longer needs nursing home care.

Eight days prior to issuing the discharge notice, the Respondent's treating physician documented in the patient record that the Appellant is deemed safe to be discharged to [REDACTED]. (Respondent Ex. 1.) The Respondent has had discharge planning discussions with the Appellant. (T. Brodie, 00:26:24.) Even though the Appellant contests his discharge, at one point he did request a discharge to assisted living. (T. Zarkhi, 00:52:11.)

The proposed discharge comes after the Appellant's completion of rehabilitation. The Appellant reached his "highest practical level" and was discharged from rehabilitation on [REDACTED] 2024; however, he still receives some physical therapy while his discharge is pending. (T. Perera, 00:32:32 – 00:32:49.; Respondent Ex. 2.) This was documented in a functional progress report authored by Ms. Perera, the Director of Rehabilitation. (Respondent Ex. 2; T. Perera, 00:39:21.) She too believes the Appellant is ready to be discharged to an assisted living facility. (T. Perera, 00:33:27.)

The Director of Nursing, Joneb Alday, also testified that the Appellant is fully capable to complete all his ADLs and his physical therapy treatment has prepared him for the transition to assisted living. (T. Alday, 00:58:10 – 00:59:25.; Respondent Ex. 2.)

The Appellant disagrees, citing to a portion of his treatment plan that indicates he is a risk of being victimized in congregate living due to his decreased mobility. (Appellant Ex. B.) The Respondent's Administrator explained that this is a general concern for all residents and that the care plan indicates interventions to control for that concern, which is done for all residents. (T. Brodie. 01:16:07 – 01:16:36.)

The Appellant claims that his patient record contains conflicting information showing that he is not suitable for a lower level of care. (T. S. [REDACTED] 01:20:56.) He cites a recent hospital re-admission from which he returned to the Respondent's facility; a medication warning; an entry stating he is at risk of falling; and an entry stating he has difficulty in bed mobility, transfers, and ambulation. (Appellant Ex. C; T. S. [REDACTED] 01:14:54. – 01:15:33 and 01:19:56 – 01:20:27.) These issues were addressed in physical and occupational therapy which the Appellant completed.

Finally, the Appellant received a Section 8 voucher that will allow him to live in his own apartment, which he believes he should be allowed to do. (T. S. [REDACTED] 01:27:19 – 01:28:43; Appellant Ex. D.) The Appellant is entitled to arrange his own voluntary discharge to whatever location he chooses, but has not explained how, if he claims to be too ill to leave the nursing home, he can move into an apartment. His treating physician has approved a discharge to assisted living, not discharge to an apartment or to live independently in the community, and that is what the Respondent has determined is an appropriate plan. If the Appellant believes he still needs some

assistance with daily living, as he, his physician, and the Respondent all seem to believe, the discharge plan to transfer him to an assisted living facility is appropriate.

**DECISION**

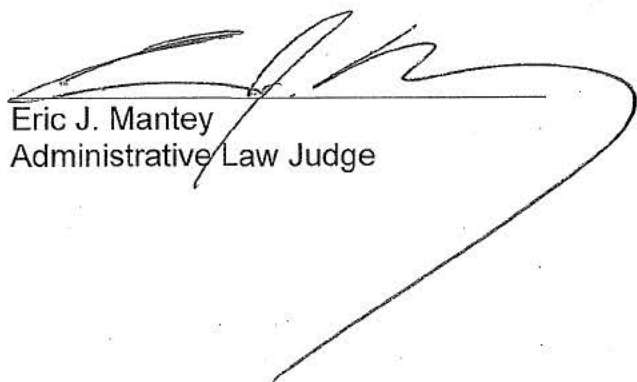
The Respondent did not establish the propriety of its determination to discharge the Appellant on grounds that the safety of other individuals in the facility would be endangered if he remains there.

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. Yonkers Center for Nursing and Rehabilitation 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

*May 8*, 2024

  
Eric J. Mantey  
Administrative Law Judge

To: Mendi Brodie, Administrator  
Yonkers Center for Nursing and Rehabilitation  
115 South Broadway  
Yonkers, New York 10701

  
c/o Yonkers Center for Nursing and Rehabilitation  
115 South Broadway  
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