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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 10, 2024

**CERTIFIED MAIL/RETURN RECEIPT**

[REDACTED]  
c/o Steuben Center for Rehab & Healthcare  
7009 Rumsey Street Extension  
Bath, New York 14810

Cheryll East, NHA  
Steuben Center for Rehab & Healthcare  
7009 Rumsey Street Extension  
Bath, New York 14810

Mendel Hagler, Deputy General Counsel  
Centers Health Care  
4770 White Plains Road  
Bronx, New York 10470

**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: 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

**Steuben Center for  
Rehabilitation and Healthcare,**

Respondent,

to discharge her from a residential  
health care facility.

**COPY**

**DECISION  
AFTER HEARING**

#DA24-6355

Hearing before: John Harris Terepka  
Administrative Law Judge

Held at: New York State Department of Health  
by videoconference  
May 9, 2024

Parties: Steuben Center for Rehabilitation and Healthcare  
7009 Rumsey Street Extension  
Bath, New York 14810  
[Ceast@Steubencenter.net](mailto:Ceast@Steubencenter.net)  
By: Mendel R. Hagler, Deputy General Counsel  
Centers Health Care  
4770 White Plains Road  
Bronx, New York 10470  
[MHagler@centershealthcare.org](mailto:MHagler@centershealthcare.org)

[REDACTED]  
Steuben Center for Rehabilitation and Healthcare  
[REDACTED]

### JURISDICTION

Steuben Center for Rehabilitation and Healthcare (the Respondent), a residential health care facility (RHCF) subject to Article 28 of the Public Health Law, determined to discharge [REDACTED] (the Appellant) from care and treatment in its nursing home. The Appellant appealed the discharge determination to the New York State Department of Health pursuant to 10 NYCRR 415.3(i).

### HEARING RECORD

Respondent witnesses: Ernest Chigama, Director of Social Work  
Respondent exhibits: A-H  
Appellant witnesses: [REDACTED]  
Appellant exhibits: None  
ALJ exhibit: I (Notice of Hearing and [REDACTED] 2024 discharge notice)

A digital recording of the hearing was made. (1h13m.)

### SUMMARY OF FACTS

1. Respondent Steuben Center for Rehabilitation and Healthcare is a residential health care facility, specifically a nursing home within the meaning of PHL 2801.2, located in Bath, New York.
2. Appellant [REDACTED], age [REDACTED] was admitted as a resident in [REDACTED] 2023 for short term rehabilitation after hospitalization for [REDACTED]. (Exhibit B.)
3. By notice dated [REDACTED] 2024, the Respondent advised the Appellant of its determination to discharge her on [REDACTED] 2024 on the grounds that her health has improved sufficiently that she no longer needs the services provided by the facility. (Exhibit A.)
4. The Appellant is not in need of nursing home care. She is medically stable, and independent with all care needs and activities of daily living. She is cognitively intact

with a BIMS score of [REDACTED]/15, ambulatory with a two wheeled walker, and her medical needs can be met on an outpatient basis. (Exhibits E, F, G.)

5. The Appellant's treating physician at the facility has determined and documented in her clinical record that she is not in need of nursing home care and that discharge to the community is medically appropriate. (Exhibit G.) The Appellant does not dispute this determination and wants to be discharged to the community.

6. Before her hospitalization and then admission to Steuben Center, the Appellant had resided in her own home but at the time of admission reported being homeless. She has claimed from the time of her admission over one year ago that she wants to return to the community, but she has repeatedly refused assisted living and senior living placements, has rejected apartments secured by the Respondent for her, and has failed to pursue referrals for supportive housing services and community assistance. (Exhibit E.)

7. The discharge notice advised the Appellant she would be discharged to the [REDACTED]. The Appellant receives social security income and owns an automobile. The discharge plan includes payment for two weeks charges and arrangements for transportation to the motel. (Exhibit H.) The Respondent's discharge plan also includes enrollment in Managed Long Term Health Care; necessary durable medical equipment; referral to Visiting Nursing Association for any necessary in-home services; a transitional appointment with a primary care physician; discharge medications; and referrals to [REDACTED] and [REDACTED] for ongoing community and housing assistance. (Exhibit E, page 1.)

8. The Appellant remains at Steuben Center pending the outcome of this hearing.

### ISSUES

Has the Respondent established that the Appellant's discharge is authorized and that the discharge plan is appropriate?

### APPLICABLE LAW

A residential health care facility (RHCF), 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(2); 10 NYCRR 415.2(k). Transfer and discharge rights of nursing home residents have been codified in Public Health Law 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.
    - ...
  - (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 Respondent has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

### DISCUSSION

The Respondent has established, and it is uncontroverted, that the Appellant is not in need of nursing home care. This is the professional opinion of the facility's care team, including the Appellant's treating physician. (Exhibits E, G.) She is alert and cognitively intact, self-administers her medication, ambulates independently with a rolling walker, and has been independent with activities of daily living (ADL) since her admission in [REDACTED] 2023. Her treating physician at the facility, Dr. Kumar, has evaluated her and documented in the facility record, in compliance with 10 NYCRR 415.3(i)(1)(ii)(a), that she does not need nursing home care, can return to the community, and that the [REDACTED] is an appropriate discharge location for her medical needs. (Exhibit G, page 6.) The Appellant presented no medical opinion suggesting that she requires nursing home care, nor does she even claim that she does require it. Appropriate grounds for discharge have been established.

A nursing home must permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(i)(1)(vii). The Respondent has complied with this regulation by making extensive efforts to include the Appellant in discharge planning and to provide options for her. She has failed to pursue and has repeatedly rejected assistance as well as specific offers of placement that would meet her care needs. (Exhibits D, E, G.)

The Appellant's claimed intention since her admission in [REDACTED] 2023 has been to return to the community, and the Respondent agreed in [REDACTED] 2023 that she was deemed safe to do so. (Exhibit E, page 21.) She has, however, consistently refused to pursue or accept any of the numerous options for discharge developed by the Respondent over the

last year. (Exhibit E.) In [REDACTED] 2024 the Respondent secured placement offers at three assisted living facilities, [REDACTED], all of which the Appellant declined. (Exhibit E, page 4.) She refused placement at [REDACTED] even after being offered a private room at the shared room rate. Given a referral and application for placement at [REDACTED], another senior living apartment, she refused to apply. (Exhibit E, page 4.)

The Appellant refused the Respondent's efforts to arrange assisted or senior living placement because she said she wanted her own apartment. The Respondent accordingly made extensive efforts to locate an apartment for her. She was assisted with applications for eight apartments in [REDACTED]. (Exhibit E, pages 12, 16-18.) In [REDACTED] 2024 an apartment was secured for her at [REDACTED]. She entered into a lease, paid a security deposit, and purchased furniture. With the Respondent's discharge plan in place, she then backed out of the move claiming she was not satisfied with the apartment. (Exhibit E, pages 7-8; Exhibit G, pages 6-7.)

In addition to its direct efforts at discharge planning, the Respondent has from the time of the Appellant's admission attempted to facilitate referrals to available housing and social services agencies to find housing. Soon after her admission to Steuben Center, the Appellant was seen by both [REDACTED] and [REDACTED], which serves as the local NYS Long Term Care Ombudsman and offers supportive housing services in connection with the New York State Nursing Home Transition and Diversion (NHTD) Medicaid Waiver Program.<sup>1</sup> These organizations have continued to offer assistance for the last year. (Exhibits A, E.)

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<sup>1</sup> [https://www.health.ny.gov/facilities/long\\_term\\_care/nhtd/](https://www.health.ny.gov/facilities/long_term_care/nhtd/)

The Respondent has made extensive efforts to assist the Appellant in finding permanent housing. It developed and actually secured several appropriate discharge options which would meet her medical needs and she has rejected them all. She has not identified other options for the Respondent to explore, nor has she demonstrated efforts of her own to develop a plan.

The Appellant is entitled to an appropriate discharge plan that meets her medical needs. She is not entitled to remain in nursing home care that she does not need unless and until she is offered her preference in housing arrangements. The Respondent has established that it made its best efforts, in accordance with PHL 2803-z(1)(b), to find other than temporary housing, and it did secure several appropriate options for housing but the Appellant has refused them all. At the hearing, the main reason she gave for refusing placements offered to her was that she is [REDACTED] and they were too small. At this point, given her refusal to participate in realistic discharge planning or accept any of the offered alternatives, discharge to the [REDACTED] with two weeks paid in advance is an appropriate plan.

The Appellant has a Managed Long Term Health Care provider in place. Durable medical equipment and prescriptions for medications will be provided, as well as a transitional care appointment with a primary care physician in the community. The Respondent agreed to assist in ensuring that the Appellant's car battery is charged by the date of discharge. Her demands for a car rack to hold an electric scooter that has been donated to her, and new batteries for the scooter, are unreasonable and have not been determined to be medically necessary. (Exhibit E, pages 8, 21; Exhibit G, page 6.) A referral to Visiting Nursing Association for care services is available, although the

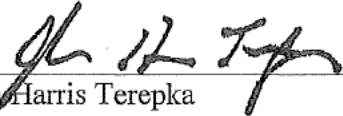
Appellant has previously rejected it. AIM's Supportive Housing Program remains available to her if she is willing to accept and cooperate with it.

Having rejected the Respondent's extensive efforts to assist her, the Appellant must be willing to work with the social services and housing resource organizations that are and have again been made available to her to pursue more permanent housing arrangements. Under these circumstances, the Respondent's plan is appropriate and the Respondent is entitled to proceed with it.

**DECISION:** Respondent Steuben Center for Rehabilitation and Healthcare has established valid grounds for the discharge of Appellant [REDACTED] and has established that its discharge plan is appropriate. The Respondent is authorized to discharge the Appellant in accordance with the [REDACTED] 2024 discharge notice.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York  
May 9, 2024

  
\_\_\_\_\_  
John Harris Terepka  
Administrative Law Judge  
Bureau of Adjudication