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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

June 5, 2024

## CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
c/o The Riverside  
150 Riverside Drive  
New York, New York 10024

Allison Bellin, DSW  
The Riverside  
150 Riverside Drive  
New York, New York 10024

Bari Goltzman, LTCOP Ombudsman  
CIDNY  
Manhattan Office  
1010 Ave of Americas, Ste 301  
New York, New York 10018

**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: nm  
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

**The Riverside Premier Healing  
and Rehabilitation Center,**

Respondent,

to discharge him from a residential  
health care facility.

COPY

DECISION  
AFTER  
HEARING

Hearing before:

Kathleen Dix  
Administrative Law Judge  
May 29, 2024  
By WebEx Videoconference

Parties:

Allison Bellin, Director of Social Work  
The Riverside Premier Healing and Rehabilitation Center  
150 Riverside Drive  
New York, New York 10024

██████████ ██████████  
c/o The Riverside Premier Healing and Rehabilitation Center  
150 Riverside Drive  
New York, New York 10024

## JURISDICTION

By notice dated [REDACTED] 2024, The Riverside Premier Healing and Rehabilitation Center, (Respondent or Facility), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge / transfer [REDACTED] [REDACTED] (Appellant) from care and treatment in its facility. 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 May 29, 2024, 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); via Webex videoconference. (49:36 m.) Evidence was received and witnesses were examined. A digital recording of the hearing was made.

## HEARING RECORD

### ALJ Exhibits:

- I Notice of Hearing for May 17, 2024
- II Notice of Hearing for May 29, 2024

### Respondent's Exhibits:

1. Physical Therapy Note (1 page)
2. Physician Progress Notes (5 pages)
3. Occupational Therapy Progress Notes (4 pages)

### Appellant's Exhibits:

None

### Respondent's Witnesses:

1. Allison Bellin, Director of Social Work
2. Leah Crease, Director of Rehabilitation
3. Faye Aguillon, Nurse Manager

### Appellant's Witnesses:

1. [REDACTED] Appellant

### Also present:

1. Bari Goltzman, Ombudsman
2. Jordan Sobon, Assistant Facility Administrator
3. Dan Muskin, Facility Administrator

## ISSUES

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

## FINDINGS OF FACTS

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

2. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2023, from [REDACTED] with diagnoses of [REDACTED] [REDACTED] (Recording @ 2:57.)

3. 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 had improved sufficiently so that he no longer needs the services provided by the facility. (ALJ Exhibit I.)

4. The discharge notice advised the Appellant he would be discharged to the [REDACTED]. (ALJ Exhibit I.)

5. The Appellant contends that his health has not improved.

6. The Appellant timely appealed the Respondent's discharge determination and proposed discharge location.

7. The Appellant remains at the 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.

...

(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 necessity of the transfer or discharge must be documented in the resident's medical record by the resident's physician. 10 NYCRR 415.3(i)(l)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(A). The Respondent has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

### DISCUSSION

The Facility asserts that the Appellant's health has improved so that he no longer requires skilled nursing services (ALJ Exhibit I, Exhibit 2). The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2023, from [REDACTED] t. [REDACTED]. Prior to his admission to the hospital the Appellant was having difficulty ambulating and climbing stairs and the hospital recommended short term rehabilitation. The Appellant was discharged from rehabilitation on [REDACTED] 2024. The Appellant no longer requires staff assistance with activities of daily living (ADLs) and currently his only nursing intervention is to receive his medications in the morning and to receive supplies

from the Certified Nurse Assistants for his ADLs. Everything else the Appellant does by himself. (Recording @ 2:57, 3:06, 3:34, 5:11, 12:31.)

The Appellant objects to the discharge because the discharge notice did not give him 30-days' notice, and due to his health issues including having [REDACTED] [REDACTED] [REDACTED] that he cannot stand for [REDACTED] minutes as stated by the Respondent, that he needs a spotter when he uses a walker, that he has a history of falling, and that he takes [REDACTED] pills each day. The Appellant asserted that his doctors whom he sees outside the Facility have told him to "take it easy" and have opined that he needs to be in a nursing home. The hearing record was left open until May 31, 2024 for the Appellant to supply a letter from his doctor to that effect. (Recording @ 6:26, 17:15-21:49, 26:54.) No letter was received.

Firstly, the discharge notice was timely. The Facility was not required to give the Appellant 30 days' notice; notice is required to be given as soon as practicable. 42 C.F.R. § 483.15(c)(4)(ii)(C).

Second, the evidence establishes that the Appellant is independent in his ADLs, can propel himself in a wheelchair, and does not need assistance with mobility. (Recording @ 3:34, 3:37, 8:21, 9:24; Exhibits 1, 3.) The necessity of the Appellant's discharge has been documented in the resident's medical record by the resident's physician, who has opined that the Appellant is stable to be discharged. (Exhibit 2.) There is no contrary medical evidence in this hearing record.

The Respondent has met its burden of establishing that the Appellant is no longer in need of nursing home care and the Appellant's discharge is permissible.

Turning to the discharge plan, the record shows that it was initially planned that the Appellant would return home after rehabilitation. The Appellant stated that he could not return home because of the stairs, *i.e.*, that he could not do 25 stairs, so returning home is no longer an option for him. The Respondent attempted discharge planning with the Appellant who was uncooperative. The Appellant did not discuss assisted living as he had no income. The Appellant has been accepted to the [REDACTED], whose intake site is wheelchair accessible, and the shelter is aware that the Appellant is wheelchair bound. (Recording @ 3:50, 4:13, 11:25, 13:43, 14:05.) The Appellant has not proposed an alternate discharge location.

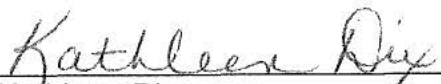
The [REDACTED] is an available and appropriate discharge location given that the Appellant independent in his ADLs and able to care for himself. However, if the Appellant has secured a home in the community that he wishes to be discharged to, the Facility may discharge the Appellant to that address in lieu of the [REDACTED] [REDACTED].

### DECISION

The Riverside Premier Healing and Rehabilitation Center has established that the discharge of the Appellant was necessary and that the discharge plan was appropriate.

1. The Riverside Premier Healing and Rehabilitation Center is authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED] 2024.
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  
June 5, 2024

  
Kathleen Dix  
Administrative Law Judge

To: Allison Bellin, Director of Social Work  
The Riverside Premier Healing and Rehabilitation Center  
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New York, New York 10024  
[abellin@theriversiderehab.com](mailto:abellin@theriversiderehab.com)

[REDACTED]  
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150 Riverside Drive  
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