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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 25, 2024

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o St. John's Episcopal Hospital  
327 Beach 19<sup>th</sup> Street  
Far Rockaway, New York 11691

Kelly Calamusa, DNS  
Oceanview Nursing and Rehabilitation  
315 Beach 9<sup>th</sup> Street  
Far Rockaway, New York 11691

Janel Bagnall, SW  
St. John's Episcopal Hospital  
327 Beach 19<sup>th</sup> Street  
Far Rockaway, New York 11691

**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 / cmg*

Natalie J. Bordeaux  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB: cmg  
Enclosure

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

COPY

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

██████████ ██████████

Appellant,

from a determination by

**Oceanview Nursing and  
Rehabilitation Center,**

Respondent,

to discharge him from a residential  
health care facility.

DECISION  
AFTER  
HEARING

Docket # 24-6388

Hearing before: Eric James Mantey  
Administrative Law Judge  
June 17, 2024  
By WebEx Videoconference

Parties: Oceanview Nursing and Rehabilitation Center  
315 Beach 9<sup>th</sup> Street  
Far Rockaway, New York 11691

By: Kelly Calamusa, DNS

██████████ ██████████

c/o St. John's Episcopal Hospital  
327 Beach 19<sup>th</sup> Street  
Far Rockaway, New York 11691

By: Jacqueline Lutchmidat, DSW  
St. John's Episcopal Hospital

## JURISDICTION

On [REDACTED] [REDACTED] 2024, Oceanview Nursing and Rehabilitation Center (Respondent), a residential health care facility subject to Article 28 of the Public Health Law (PHL), transferred [REDACTED] [REDACTED] (Appellant) from care and treatment in its facility to St. John's Episcopal Hospital (St. John's), Far Rockaway, New York. A Notice of Transfer/Discharge dated [REDACTED] 2024, was sent to the Appellant's designated representative, family member, and to an Ombudsman on [REDACTED] 2024. The Respondent subsequently would not allow him to return to the facility. 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 originally scheduled for June 12, 2024, but was rescheduled to allow Respondent representatives time for a religious observance. The hearing was held on June 17, 2024, via WebEx videoconference and in accordance with Part 415 of 10 NYCRR; Part 483 of Title 42 United States Code of Federal Regulations (CFR); and New York State Administrative Procedure Act § 306(1). Evidence was received and witnesses were examined. The Appellant was present at the hearing and was assisted by Jacqueline Lutchmidat, Director of Social Work at St. John's. A digital recording of the hearing was made. (Length – 01:45:33.)

## HEARING RECORD

ALJ Exhibits:

- I. Notice of Hearing and Discharge Notice

Respondent Exhibits: None

Appellant Exhibits<sup>1</sup>:

1. Nurse Notes
2. Patient Records

Respondent's Witnesses:

1. Kelly Calamusa, DNS

Appellant's Witnesses:

1. [REDACTED]
2. Jacqueline Lutchmidat, DSW
3. Amy Ferrara, SW
4. Promis Ejindu, PCT
5. Hassain Qureshi, M.D.

**ISSUES**

Has the Facility 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, specifically a nursing home, within the meaning of PHL § 2801.2 and 10 NYCRR 415.2(k), located in Delhi, New York.

2. The Appellant, [REDACTED], was initially admitted to the Respondent's nursing home from [REDACTED] in [REDACTED] 2023. (Exhibit [Ex.] 2; Testimony [T.] Calamusa – 00:14:19.)

3. On [REDACTED], the Respondent sent the Appellant to St. John's for [REDACTED] related to his [REDACTED] diagnosis, and issued a discharge notice to him dated for that same date. The discharge notice stated the Appellant's needs cannot be met after reasonable attempts as the basis for the discharge. (ALJ I and Ex. 2.)

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<sup>1</sup> These were mistakenly referred to as Respondent Exhibits during the hearing; they are not, as they were offered by St. John's on behalf of the Appellant.

4. The discharge notice was not mailed to the Appellant's designated representative, Ombudsman, and family member until [REDACTED], 2024.

5. St. John's determined that the Appellant's health improved so that he was no longer in need of hospitalization and thus was suitable to return to the Respondent's nursing home. (T. Lutchmidat; 00:38:07 – 00:34:45. T. Qureshi; 00:52:13. T. Ferrara; 01:29:01 – 01:30:00 and 01:36:03.)

6. The Respondent refused to readmit the Appellant to the nursing home. (T. Lutchmidat; 00:41:59 – 00:43:49. T. Ferrara; 01:35:28.)

7. The Appellant remains at St. John's 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:

(1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in 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. . .

When alleging that a transfer or discharge is appropriate because it is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility, 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)(1)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(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 medical records from [REDACTED] did not indicate his [REDACTED] diagnosis; thus, the Respondent claims it did not know he had [REDACTED] until after his admission to the nursing home. (T. Calamusa; 00:29:01 – 00:29:47.) Due to his formerly untreated [REDACTED] and [REDACTED], the Respondent claims its nursing home is unable to meet the Appellant's needs.

Even though the Respondent did not know of the Appellant's [REDACTED] at the time of admission, or even if it emerged after admission, the Respondent did admit him and it is responsible to establish permissible grounds and an appropriate discharge plan before discharging him. While it is acceptable to send a nursing home resident to an acute care facility if the need arises, a hospital is not an appropriate final

discharge location. Refusing to allow the Appellant's return to the nursing home is not appropriate either. What the Respondent did is commonly called a 'hospital dump'.

Department regulations and policy are explicit about these obligations:

Facilities are required to determine their capacity and capability to care for the residents they admit, so in the absence of atypical changes in residents' conditions, it should be rare that facilities that properly assess their capacity and capability to care for a resident then discharge that resident based on the inability to meet the resident's needs. Therefore, facilities should not admit residents whose needs they cannot meet based on the facility assessment. DAL-NH 19-07, August 20, 2019; reissued October 11, 2022.

State and Federal regulations require that nursing home residents who are temporarily hospitalized be allowed to return to the facility following hospitalization... Hospitals are not acceptable discharge locations. When sending residents with episodes of acting out behavior to hospitals for treatment, the nursing home is responsible to readmit the resident and/or develop an appropriate discharge plan. In these cases, the hospital is not considered to be the final discharge location. DAL-NH 15-06, September 23, 2015.

The Respondent argued at the hearing that the Appellant is a [REDACTED]

[REDACTED]. Ms. Calamusa testified that the Appellant [REDACTED] a C.N.A., ambulance company staff, and police who were called to the scene of a [REDACTED] on [REDACTED] 2024. The Appellant complained about persons in the nursing home who he feels [REDACTED] him. (T. Appellant; 01:25:06). To that he responded [REDACTED] His behaviors may be related to his failure to take medication designed to control the [REDACTED] effects of [REDACTED]. The discharge notice, however, does not cite endangerment as a basis for the Appellant's discharge.

St. John's records show that on [REDACTED], 2024, the Appellant did need [REDACTED] care due to [REDACTED] symptoms of [REDACTED]. (Ex. 2.) His [REDACTED] and refusals to take medications persisted from his admission to St.

John's until [REDACTED] 2024, when St. John's received judicial permission to medicate him over his objection. (Ex. 2.)

Since that time, the Appellant has not had a [REDACTED] at St. John's and he has received [REDACTED]. (Ex. 2.) He continues to refuse some medications, but not medications used in relation to his [REDACTED] (Ex. 2.) He remains on 1:1 supervision, but that is for his safety, not the safety of others. (Ex. 2. T. Lutchmidat – 00:39:25 – 00:39:40.) Testimony from the Respondent revealed the Appellant is now categorized as a "level two" which is required for the nursing home to re-admit an individual after a [REDACTED] hospitalization. (T. Calamusa – 00:07:53 – 00:08:26.) Nonetheless, the Respondent still refuses to allow the Appellant's return.

St. John's cleared the Appellant for discharge to the Respondent on [REDACTED] 2024. (Ex. 2.) Since that time, he has not displayed any [REDACTED], yet the Respondent refused to take him back, at first for lack of beds, and finally because they believe their facility lacks the ability to care for his needs. (Ex. 2. T. Ferrara; 01:30:24 – 01:35:38.)

A facility's determination to not permit a resident to return must not be based on the resident's condition when originally sent to the hospital. DAL 19-07, *supra*. The Respondent presented no evidence to controvert the hospital's conclusion that, whatever the Appellant's behaviors were that led to his being hospitalized on [REDACTED] 2024, his condition now is suitable for return to a nursing home. The Respondent has not demonstrated either that it made reasonable attempts to meet the Appellant's needs or that it made efforts to develop an appropriate discharge plan.

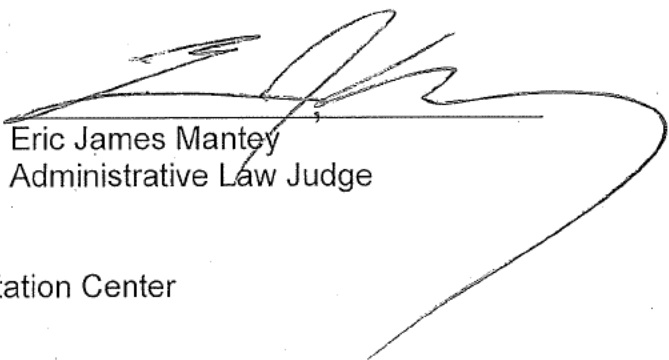
St. John's is allowed to discharge the Appellant, after his next [REDACTED] if needed, to the Respondent who must accept him. If the Respondent determines to issue a new discharge notice to the Appellant after he returns, the Respondent is reminded to do so only in full compliance with pertinent regulations which include service of a notice of discharge that includes both permissible grounds and an appropriate discharge plan.

**DECISION**

The Respondent failed to establish that its determination to discharge the Appellant is correct and that its discharge plan is appropriate.

1. The Respondent is not authorized to discharge the Appellant. The Respondent must readmit the Appellant to the first available bed before it admits any other person to the facility. 10 NYCRR 415.3(i)(2)(i)(d).
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 25, 2024



Eric James Mantey  
Administrative Law Judge

To: Oceanview Nursing and Rehabilitation Center  
315 Beach 9<sup>th</sup> Street  
Far Rockaway, New York 11691  
Attn.: Kelly Calamusa, DNS  
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