

cc: [DOH.sm.DCAppeals@health.ny.gov](mailto: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

July 17, 2024

**CERTIFIED MAIL/RETURN RECEIPT**

██████████  
c/o Highland Park Rehab & Nursing Center  
160 Seneca Street  
Wellsville, New York 14895

Blake Apsokardu, NHA  
Highland Park Rehab & Nursing Center  
160 Seneca Street  
Wellsville, New York 14895

Richard Miller III, Esq.  
Hinman, Howard & Kattell  
700 Security Mutual Building  
80 Exchange Street  
Binghamton, New York 13901

**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

**Highland Park Rehabilitation and  
Nursing Center,**

Respondent,

to discharge her from a residential health care facility.

COPY

DECISION  
AFTER  
HEARING

Docket #DA24-6403

Hearing before: Eric J. Mantey  
Administrative Law Judge  
July 12, 2024  
By WebEx Videoconference

Parties: Highland Park Rehab and Nursing Center  
160 Seneca Street  
Wellsville, New York 14895

By: Richard Miller III, Esq.  
Harvey Mervis, Esq.  
Hinman, Howard & Kattell  
700 Security Mutual Building  
80 Exchange Street  
Binghamton, New York 13901

██████████  
c/o Highland Park Rehab and Nursing Center  
160 Seneca Street  
Wellsville, New York 14895

By: *Pro Se*

**JURISDICTION**

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

A hearing was initially scheduled for July 9, 2024, but an adjournment was granted on request of the Appellant. The hearing was subsequently held on July 12, 2024, in accordance with 10 NYCRR § 415.3; 42 CFR § 483.15; Part 51 of 10 NYCRR; and New York State Administrative Procedure Act §301(1), via Webex videoconference. The Appellant appeared with an Ombudsman, Mikayla Middeaguh, who was there for emotional support only. A digital recording of the hearing was made. (Length - 02:35:33.)

**HEARING RECORD**

ALJ Exhibits:

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

Respondent Exhibits:

- A. PRI, Assessment, Case Notes, Etc.
- B. Not Admitted
- C. Not Admitted
- D. Social Work Letter, Face Sheet, Collections Letters, Etc.

Appellant Exhibits: None

Respondent Witnesses:

- 1. Alisa Swartz, Business Office Manager, Admission Coordinator
- 2. Lina Belcer, Assistant Director of Nursing, Infection Control Nurse
- 3. [REDACTED] [REDACTED]

Appellant's Witnesses:

1. [REDACTED]

### ISSUES

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

### FINDINGS OF FACT

1. 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 Wellsville, New York.

2. The Appellant was admitted to the nursing home for short term care on [REDACTED] 2023, and as of the hearing date, had an overdue balance owed to the facility in the amount of \$ [REDACTED] (Respondent Exhibit [Ex.] D.)

3. From [REDACTED] 2023, through [REDACTED] 2023, the Appellant was obligated to contribute \$ [REDACTED] per day for her stay at the nursing home. An additional NAMI of \$ [REDACTED] for [REDACTED] 2023 was also owed. Beginning on [REDACTED] 2023, she was not obligated to use any of her personal funds for her stay at the nursing home. (Respondent Ex. D.)

4. The Appellant received at least one invoice and two collections letters advising her that she has an overdue debt to the Respondent that must be paid. (Respondent Ex. D.)

5. By notice dated [REDACTED], 2024, the Respondent advised the Appellant of its determination to discharge her on [REDACTED], 2024, on the grounds that she has failed, after reasonable and appropriate notice, to pay for her stay at the nursing home, and

that her health has improved sufficiently so that she no longer needs the services provided by the Respondent. (ALJ Ex. I.)

6. The discharge notice advised the Appellant that she would be discharged to the [REDACTED]. (ALJ Ex. I.)

7. The Appellant remains at the Respondent's 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,

(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.

...

(b) transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid, or third-party insurance) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable

charges under Medicaid. Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the funds;

(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 post-discharge plan of care is to be developed "with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment and assure that needed medical and supportive service have been arranged and are available to meet the identified needs of the resident." 10 NYCRR § 415.11(d)(3). 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. 10 NYCRR § 415.3(i)(1)(ii)(a); 42 C.F.R. § 483.15(c)(2)(ii)(A).

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 Appellant was made aware of her debt to the Respondent. (Respondent Ex. D.) She admits that she owes the facility money, but she disputes roughly \$ [REDACTED] of her debt, and the Respondent is willing to forgo collecting that disputed portion thereby allowing the Appellant to only pay the undisputed portion that she somewhat reluctantly, with questionable sincerity, agrees to do. (Testimony, Appellant, at 02:21:36 – 02:22:23; 01:52:37.)

A discharge note signed by the Appellant's physician, David Dinello, states that after re-evaluation, chart review, ordering/providing additional treatment and assessments, and collaborating with team members and family regarding her further plan of care, the Appellant is cleared for discharge. (Respondent Ex. D.) The Respondent also documented that the Appellant: no longer needs or wants occupational therapy; completes activities of daily living independently; is oriented to herself, others and to place, and shows no signs of dementia. (Respondent Ex. A and D.)

Dr. Dinello did not document the appropriate setting to which the Appellant is suitable for discharge. Julie Bliven, Social Worker, implied in her [REDACTED] 2024, letter that discharge into the "community", as opposed to a lower level of care in another facility, would be appropriate; however, the plan for the Appellant to live in a hotel was not specifically mentioned nor was it detailed that the Appellant could safely reside at that location. (Respondent Ex. D.)

The hearing record shows the Appellant's last recorded weight as [REDACTED] pounds, and Dr. Dinello did reflect that the Appellant suffers from "[REDACTED]". (Respondent Ex. D.) The Appellant appeared at the hearing in an [REDACTED] wheelchair. (Testimony, Belcer, at 01:35:33.) The Appellant uses her wheelchair safely, and she only uses a walker for very short distances, approximately [REDACTED] to [REDACTED] feet according to the Appellant's testimony. (Respondent Ex. A and D; Testimony, Belcer, at 01:37:31; Testimony, Appellant, at 01:45:33.) Her records show frequent documentation of [REDACTED] problems including the [REDACTED] that led to her stay at the nursing home. (Respondent Ex. A and D.)

Testimony provided by Lina Belcer, Assistant Director of Nursing (ADON) and Infection Control Nurse, revealed that the Respondent is not familiar with the [REDACTED] and she does not know if that hotel is handicap accessible, and even if it were, she does not know if the Appellant's [REDACTED] wheelchair can [REDACTED] the [REDACTED] [REDACTED] (Testimony, Belcer, at 01:35:18; 01:36:01; 01:36:00.) The Appellant herself does not know if her [REDACTED] wheelchair can [REDACTED] the [REDACTED]. (Testimony, Appellant, at 01:47:45.) She needs safety bars in the bathroom. (Testimony, Appellant, at 01:46:16.) She does not know if safety bars are present in the hotel's bathrooms, and she does not know if the bathrooms are fitted with a special apparatus she requires for toileting care/hygiene. (Testimony, Appellant, 01:48:38; 01:57:05.)

Information on the appropriateness of the planned discharge location is not in the Respondent's records, and the Respondent's testimony and evidence does not indicate if that location is appropriate. The Appellant's lack of knowledge on whether the discharge location is appropriate also indicates that discharge planning with her was not sufficient. For these reasons, the discharge plan is not appropriate.

### CONCLUSION

Even though the Respondent met its burden, showing that Appellant was notified of her debt to the nursing home yet she failed to pay, and that her health had improved sufficiently so that she no longer needs skilled nursing services, Respondent records and testimony introduced at hearing do not indicate how and why the proposed discharge location is appropriate given the Appellant's limited ambulation via walker and her continued reliance on using an [REDACTED] wheelchair for ambulation.

