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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

August 5, 2024

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Apex Rehab & Care Center  
78 Birchwood Drive  
Huntington Station, New York 11746

Eve Green Koopersmith, Esq.  
Garfunkel Wild, P.C.  
111 Great Neck Road  
Great Neck, New York 11021

Annmarie Karazia, DSW  
Apex Rehab & Care Center  
78 Birchwood Drive  
Huntington Station, New York 11746

Jenna Lacognata, DSW  
Cold Spring Hills Center for  
Nursing & Rehabilitation  
378 Syosset Woodbury Road  
Woodbury, New York 11797

**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: 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

**Cold Spring Hills Center for Nursing  
and Rehabilitation,**

Respondent,

to discharge him from a residential health care facility.

DECISION  
AFTER  
HEARING

Docket #DA24-6414

Hearing before: Eric J. Mantey  
Administrative Law Judge  
July 31, 2024  
By WebEx Videoconference

Parties: Cold Spring Hills Center for Nursing and Rehabilitation  
378 Syosset Woodbury Road  
Woodbury, New York 11797

By: Eve Koopersmith, Esq.  
Garfunkel Wild, P.C.  
111 Great Neck Road  
Great Neck, New York 11021

██████████ ██████████  
c/o Apex Rehabilitation and Care Center  
78 Birchwood Drive  
Huntington Station, New York 11746

By: *Pro Se*

**JURISDICTION**

By notice dated [REDACTED] 2024, Cold Spring Hills 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] [REDACTED] (Appellant) from care and treatment in its 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).

A hearing was held on July 31, 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. A digital recording of the hearing was made. (Length – 01:44:37.)

**HEARING RECORD**

ALJ Exhibits:

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

Respondent Exhibits:

- A. Smoking Contract
- B. Medical Progress Notes
- C. Social Services Progress Notes
- D. C.N.A. Docs [REDACTED] and [REDACTED] 2024
- E. [REDACTED] PRI
- F. Resident Face Sheet

Appellant Exhibits: None

Respondent Witnesses:

- 1. Jenna Lacognata, DSW

Appellant's Witnesses:

- 1. [REDACTED] [REDACTED]
- 2. Annmarie Karazia, DSW

## 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, also known as a nursing home, within the meaning of PHL § 2801.2 and 10 NYCRR § 415.2(k), located in Woodbury, New York.

2. The Appellant was admitted to the Respondent on [REDACTED], 2023, from [REDACTED]. (Respondent Exhibit [Ex.] F.)

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

4. The Respondent hand wrote on the Discharge Notice, "[REDACTED] was non-compliant w/ the facility smoking policy x3 & discharge planning was initiated." (ALJ Ex. I.)

5. The discharge notice advised the Appellant that he would be discharged to Apex Rehabilitation and Care Center (Apex), Huntington Station, New York. (ALJ Ex. I.)

6. The Appellant was discharged from the Respondent to Apex on [REDACTED] 2024. (Respondent Ex. B and C.)

7. On or about [REDACTED] 2024, the Appellant, and an Ombudsman, informed Ms. Karazia of Apex that he was no longer happy there and he wanted to appeal his discharge from the Respondent. (Testimony [T.] Karazia, 01:34:01.)

### 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.

...

(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**

When a nursing home resident is discharged on the basis that the resident’s health has improved sufficiently so that the resident no longer needs the services provided by the nursing home, the resident must be given 30 days before being discharged. 10 NYCRR § 415.3(i)(1)(iv). The Appellant did not receive notice at least 30 days prior to his discharge from the Respondent. (ALJ Ex. I; Respondent Ex. B and C.) Additionally, the hearing record does not contain evidence of documentation by the resident’s physician explaining how or why the Appellant’s discharge is necessary. Documentation made by a nurse practitioner or any other medical professional other than a resident’s physician is insufficient. 10 NYCRR § 415.3(i)(1)(ii)(a); 42 C.F.R. § 483.15(c)(2)(ii)(A).

The Respondent discharged the Appellant to Apex, another nursing home providing the same services provided by the Respondent; the discharge was “lateral”. (T. Lacognata, 01:07:46.) This clearly shows that the Appellant’s discharge was not necessary. Testimony from an Apex representative confirms that the Appellant is not independent in his activities of daily living and needs nursing home care. (T. Karazia,

01:34:45.) The Appellant's condition on the hearing date is no different than it was three months earlier. (T. Karazia, 01:35:52.)

Separate and apart from the Respondent's discharge of the Appellant, the Respondent argued that the Appellant was a danger to other people in the facility. The endangerment category is not marked as a basis for the Appellant's discharge on the discharge notice. (ALJ Ex. I.)

The Respondent contends that the Appellant violated the Respondent's smoking policy on three occasions. (ALJ Ex. I; Respondent Ex. C; T. Lacognata, 00:23:34) However, he was only found smoking once at a moment when he was outside of the facility. (T. Lacognata, 01:28:22; T. Appellant, 01:31:14 – 01:44:37.) The Respondent made a conclusory determination without further explanation that this act, along with two other trivial violations of the Respondent's smoking policy was, or could be, a danger to others. Moreover, smoking outside of the facility on one occasion, and committing two trivial policy violations, are not reasonable indications that the Appellant endangered or could endanger someone at the facility.

### **CONCLUSION**

The Respondent did not meet its burden to show that the Appellant's health had improved sufficiently so that he no longer needs skilled nursing services. The Appellant was discharged on only two days' notice and without any supporting documentation from a physician in his clinical record stating how the discharge is necessary and how the discharge location is appropriate.

## DECISION

The Respondent did not establish that its determination to discharge the Appellant on the grounds he is no longer in need of nursing home care is correct.

1. The Respondent must readmit the Appellant to the first available semi-private bed prior to admitting 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  
August 5, 2024



Eric J. Mantey  
Administrative Law Judge

To: Cold Spring Hills Center for Nursing and Rehabilitation  
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Woodbury, New York 11797  
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