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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 19, 2024

## CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]  
c/o [REDACTED]  
[REDACTED]

Bonnie Gang, SW  
Manhattan VA Medical Center  
423 East 23<sup>rd</sup> Street, 15<sup>th</sup> Floor  
New York, New York 10010

Angela C. Belizzi, Esq.  
Cassena Care  
225 Crossways Park Drive  
Woodbury, New York 11797

**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

COPY

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

██████████

Appellant,

from a determination by

**Sea Crest Nursing and  
Rehabilitation Center,**

Respondent,

to discharge him from a residential  
health care facility.

DECISION  
AFTER  
HEARING

#DA24-6425

Hearing before:

John Harris Terepka  
Administrative Law Judge  
August 19, 2024  
By videoconference

Parties:

Sea Crest Nursing and Rehabilitation Center  
3035 West 24<sup>th</sup> Street  
Brooklyn, New York 11224  
By: Angela C. Belizzi, Esq.  
Cassena Care  
225 Crossways Park Drive  
Woodbury, New York 11797  
[angelab@cassenacare.com](mailto:angelab@cassenacare.com)

██████████  
c/o ██████████  
██████████

By: Bonnie Gang, social worker  
Manhattan VA Medical Center  
423 East 23<sup>rd</sup> Street, 15<sup>th</sup> floor  
New York, New York  
[Bonnie.gang@va.gov](mailto:Bonnie.gang@va.gov)

### JURISDICTION

Sea Crest Nursing and Rehabilitation Center (the Respondent), a residential health care facility (RHCF) subject to Article 28 of the Public Health Law, transferred [REDACTED] (the Appellant) from its nursing home to an acute care hospital and refused to readmit him. The Appellant appealed the discharge to the New York State Department of Health pursuant to 10 NYCRR 415.3(i). The Respondent has the burden of proving that discharge was necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

### SUMMARY OF FACTS

1. Respondent Sea Crest Nursing and Rehabilitation Center 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 Brooklyn, New York.
2. Appellant [REDACTED] [REDACTED] age [REDACTED] was accepted as a resident of Sea Crest and was transferred from another nursing home on [REDACTED], 2024. Upon arrival at Sea Crest he was medically unstable and was sent to the Manhattan VA Medical Center for evaluation.
3. The Manhattan VA Medical Center is a general hospital within the meaning of PHL 2801(10). On [REDACTED] 2024, the hospital determined that the Appellant does not require continued inpatient medical care at a general hospital and advised the Respondent that he was ready to return to Sea Crest.
4. The Respondent, after learning on [REDACTED] that the Appellant is a [REDACTED] [REDACTED] refused to accept him back at Sea Crest.
5. At no time did the Respondent provide to the Appellant or his designated representative or other family member a written notice of discharge including the grounds

for discharge, discharge location, the Appellant’s appeal rights, and the other information required by 10 NYCRR 415.3(i)(1)(iii),(iv)&(v).

6. The Respondent has not developed an appropriate post-discharge plan of care for the Appellant that addresses his long-term care and medical needs and how they will be met after discharge, as required by 10 NYCRR 415.3(i)(1)(vi).

**ISSUES**

Has the Respondent established that the Appellant’s discharge from Sea Crest is necessary and that the discharge plan is appropriate?

**HEARING RECORD**

Respondent witnesses:	Amanda Cooperberg, director of admissions Olga Zalesskaya, RN
Respondent exhibits:	1-5
Appellant witnesses:	none
Appellant exhibits:	A, B
ALJ exhibit:	ALJ I (hearing notice)

The hearing was held and recorded by Webex videoconference. (0h50m.) The Appellant is not capable of participating in a hearing and was not present. He was represented at his request by Bonnie Gang, social worker at the VA hospital.

**DISCUSSION**

Transfer and discharge rights of nursing home residents have been codified in Public Health Law 2803-z and set forth in Department regulations at 10 NYCRR 415.3(i) and federal regulations at 42 CFR 483.15(c). The Respondent claims it is not obligated to comply with these laws and regulations in this case because it did not admit the Appellant as a resident. This argument is rejected. The Respondent accepted him as a transfer from another nursing home on 2024. Upon his arrival at Sea Crest on after having been accepted by it for the purpose of admission, the Respondent assumed responsibility for his nursing home care before sending him to a hospital for an evaluation. It is not entitled to leave him at the hospital.

Discharge to a general hospital does not terminate a nursing home's responsibility to its resident. Department policy disseminated to nursing home administrators by "Dear Administrator Letter" (DAL) is explicit on this point:

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. DAL-NH 15-06, September 23, 2015.

Since ████ it has been the opinion of the hospital physicians and care team that the Appellant no longer requires hospitalization and that a nursing home is an appropriate placement. (Exhibit 2.) The Respondent offered no evidence to call this assessment into question, and indeed acknowledges that he is clinically appropriate for nursing home placement and that his physical and health care needs can be managed by the facility.

The Respondent nevertheless refuses to accept the Appellant back on the grounds that it has a policy of not admitting ████ ████ (Exhibit 5.) It claims it did not know the Appellant was a ████ when it accepted him from another nursing home on ████ and that it did not learn of it until ████ (Exhibits 1, 3.)

A policy of not accepting ████ may be within a nursing home's discretion to decline admission to begin with, but it is not authorized grounds for discharging a resident nearly one month after he was accepted for admission, arrived from the transferring nursing home, and was sent to a hospital by the Respondent. The Respondent waived any such admission policy when it accepted the Appellant for admission:

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.

The Respondent cited no authority that requires or entitles it to discharge a [REDACTED] [REDACTED] [REDACTED] nor has it offered evidence of any conduct or even risk of conduct by this [REDACTED] year old wheelchair and [REDACTED] resident, with no known history of [REDACTED] behavior, that it cannot be expected to manage. (Exhibit 2.)

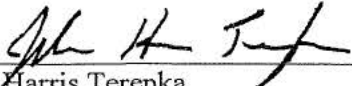
Before it transfers or discharges a resident, a nursing home must notify the resident and designated representative, if any, of the transfer or discharge and the grounds for it in writing. 10 NYCRR 415.3(i)(1)(iii),(iv)&(v); 42 CFR 483.15(c)(3)&(5). No notice was issued in this case. When a resident is hospitalized, the nursing home is required to readmit him if he requires nursing home care. 10 NYCRR 415.3(i)(3); 42 CFR 483.15(e). If the resident is not appropriate for return to the nursing home, the nursing home is required to provide sufficient preparation and orientation to ensure safe and orderly transfer or discharge in the form of a discharge plan which addresses his medical needs and how these will be met after discharge. 10 NYCRR 415.3(i)(1)(vi). As the Respondent has not complied with any of these regulations it is not authorized to discharge the Appellant.

**DECISION:** Respondent Sea Crest Nursing and Rehabilitation Center has failed to establish that the discharge of Appellant [REDACTED] [REDACTED] was necessary and that its discharge plan is appropriate.

The Respondent is directed, pursuant to 10 NYCRR 415.3(i)(2)(i)(d), to readmit the Appellant prior to admitting any other person.

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

Dated: Rochester, New York  
August 19, 2024

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