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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

September 25, 2024

**CERTIFIED MAIL/RETURN RECEIPT**

██████████  
c/o Casa Promesa  
308 East 175 Street, Room 423  
Bronx, New York 10457

Kalani Butts  
Casa Promesa  
308 East 175 Street  
Bronx, New York 10457

**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

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

██████████

Appellant,

from a determination by

**Casa Promesa,**

Respondent,

to discharge him from a residential  
health care facility.

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**DECISION  
AFTER HEARING**

#DA24-6444

Hearing before: John Harris Terepka  
Administrative Law Judge

Held at: New York State Department of Health  
by videoconference  
September 23 & 24, 2024

Parties: Casa Promesa  
308 East 175<sup>th</sup> Street  
Bronx, New York 10457  
By: Kalani Butts-Peterson, administrator  
[KButts@promesa.org](mailto:KButts@promesa.org)

██████████  
Casa Promesa

Also appearing: Barry Schecter, state ombudsman

**JURISDICTION**

Casa Promesa (the Respondent), a residential health care facility (RHCF) subject to Article 28 of the Public Health Law, determined to discharge ██████████ (the Appellant) from care and treatment in its nursing home. The Appellant appealed the discharge determination to the New York State Department of Health pursuant to 10 NYCRR 415.3(i).

**HEARING RECORD**

Respondent witnesses: Alejandro Quitana-Velasquez, director of nursing  
Julie Cintron, case manager  
Kevin Pritchett, PA  
Joseph Scarpa, MD  
Respondent exhibits: 1-9  
Appellant witnesses: ██████████  
Appellant exhibits: None  
ALJ exhibit: ALJ I (hearing notice with notice of discharge)

The hearing was held and recorded by Webex videoconference. (Day I, 1h44m; Day II, 1h4m.)

**SUMMARY 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 the Bronx, New York.
2. Appellant ██████████ age ██████████ was admitted as a resident in ██████████ 2024 for wound care and short-term rehabilitation after hospitalization with ██████████ that resulted in the ██████████. His diagnoses include ██████████ (Exhibit 1.)
3. By notice dated ██████████, 2024, the Respondent advised the Appellant of its determination to discharge him on ██████████, 2024 on the grounds that his health has



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 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).

A resident may be discharged when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that 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. 10 NYCRR 415.3(i)(1)(i)(a)((2)). The facility must ensure complete documentation in the resident's clinical record, made by the resident's physician, when seeking to discharge a resident on these grounds. 10 NYCRR 415.3(i)(1)(ii)(a).

The facility must 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. 10 NYCRR 415.3(i)(1)(vi). The facility must also permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(i)(1)(vii). The facility shall use its best efforts to secure appropriate placement or a residential arrangement for the resident, other than temporary housing assistance such as a shelter. PHL 2803-z(1)(b).

The facility has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

### DISCUSSION

The Respondent has established that the Appellant is no longer in need of nursing home care, and his care team at the facility has determined that discharge to the [REDACTED] shelter system is medically appropriate. He is independent with activities of daily living (ADL). He has completed and been discharged from therapies and receives custodial care only. Respondent nurse practitioner Sherine Brown documented in a [REDACTED] 2024 medical progress note: "There are no skilled nursing needs at this time for this resident and he is stable to go to [REDACTED] /community/shelter as available." (Exhibit 3.) The Respondent's medical director, Joseph Scarpa, MD, has examined the Appellant, reviewed the clinical record, and documented that he does not require nursing home care. (Exhibit 9; Testimony, Scarpa.) The Appellant disagrees with the Respondent's care team conclusions, but presented no medical opinion to refute the care team's professional opinion that he no longer requires nursing home care. Appropriate grounds for discharge have been established.

With regard to the appropriateness of the discharge plan, the Appellant claims he does not want to remain at Casa Promesa but objects to the Respondent's discharge plan to refer him to the [REDACTED] shelter, which is part of the [REDACTED]. He wants to be transferred to another nursing home even though the evidence fails to establish that he requires nursing home care.

The Respondent has complied with its obligation to permit the Appellant to participate in deciding where he will reside after discharge by making significant efforts to include him in discharge planning and to assist him in finding a place to live other than temporary housing. The only discharge plan the Appellant has been willing to consider is

transfer to another nursing home. The Respondent accordingly made referrals at his request to at least six other nursing homes, all of which have rejected him. (Exhibit 5; Testimony of Cintron.) The Appellant has not identified any other options for the Respondent to explore, nor has he demonstrated significant efforts of his own to develop a plan.

At the time he came to Casa Promesa the Appellant had been homeless for many years and so has no home to return to. (Testimony, [REDACTED] He was at one time a resident of the [REDACTED] shelter, which has accepted him to return and has a room available. (Testimony, Cintron; Exhibit 5.) Resort was had to the shelter only after reasonable efforts by the Respondent to develop another plan, with the Appellant's participation, were unsuccessful.

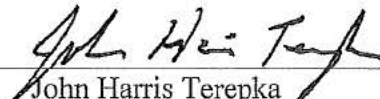
The Appellant is not entitled to remain in nursing home care he no longer requires. He was homeless before his hospitalization and admission to the Respondent for rehabilitation. In the absence of a demonstrable and realistic option for another discharge plan, referral to [REDACTED] is appropriate. The discharge plan will include appropriate referrals for medical care including a home attendant, and further housing assistance and social services resources can be made available to him at the shelter. He will be provided with a supply of medications, appointments have been made for follow up medical care (Exhibit 6), and the Respondent agreed at the hearing to make any other medical appointment the Appellant may request upon his provision of the name and telephone number of the provider. Under these circumstances, the Respondent's discharge plan is appropriate and the Respondent is entitled to proceed with it.

**DECISION:**

Respondent Casa Promesa has established valid grounds for the discharge of Appellant ██████████ ██████████ and has established that its discharge plan is appropriate. The Respondent is authorized to discharge the Appellant in accordance with the ██████████ 2024 discharge notice.

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

Dated: Rochester, New York  
September 24, 2024

  
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John Harris Terepka  
Administrative Law Judge  
Bureau of Adjudication