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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

October 23, 2024

## CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
c/o Morningside Nursing & Rehab  
1000 Pelham Parkway South  
Bronx, New York 10461

Stephen Fumularo  
Morningside Nursing & Rehab  
1000 Pelham Parkway South  
Bronx, New York 10461

Katie A. Barbieri, Esq.  
225 Crossways Park Drive  
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: 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

**Morningside Nursing and  
Rehabilitation Center,**

Respondent,

to discharge her from a residential  
health care facility.

COPY

DECISION

DA24-6460

Hearing Before:           Jeanne T. Arnold  
                                  Administrative Law Judge

Held via:                    WebEx Videoconference

Hearing Date:             October 21, 2024

Parties:                    Morningside Nursing and Rehabilitation Center  
                                  1000 Pelham Parkway South  
                                  Bronx, New York 10461

By:   Katie A. Barbieri, Esq.  
          Morningside Nursing & Rehabilitation  
          c/o Legal Department  
          225 Crossways Park Drive  
          Woodbury, New York 11797

██████████ ██████████ Pro Se  
Morningside Nursing and Rehabilitation Center

**JURISDICTION**

Morningside Nursing and Rehabilitation Center (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge resident [REDACTED] [REDACTED] (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR 415.3(i).

**HEARING RECORD**

Facility witnesses: Patricia Ciani, Director of Nursing  
Yudikha Saini, Director of Rehabilitation  
Fernando Villamar, Director of Social Services  
Alexander Yurkiw, Physician

Facility exhibits: A-D

Appellant witnesses: [REDACTED] [REDACTED] Appellant

Appellant exhibits: None

ALJ exhibit: I

A digital recording of the hearing was made (1h:25m in duration). Testimony is indicated by “T”.

**ISSUES**

Has the Facility established that its determination to discharge the Appellant is authorized and that its discharge plan is appropriate?

**FINDINGS OF FACT**

1. The Appellant is a [REDACTED]-year-old female who was transferred from a hospital to the Facility on or around [REDACTED], 2022, for rehabilitation after [REDACTED] of her [REDACTED]. She has been diagnosed with, among other things, [REDACTED], [REDACTED] [REDACTED]. (Exhibits A, B; T Appellant.)

2. The Appellant last received Physical Therapy (PT) and Occupational Therapy (OT) services at the Facility in [REDACTED] 2024. She was discharged from such services after her goals were attained. The Facility performed a therapy screening assessment of the Appellant on [REDACTED] [REDACTED] 2024, and found that she still does not require restorative therapies. (Exhibit C; T Saini.)
3. The Appellant does not currently receive any therapeutic services at the Facility. (Exhibits B, C; T Saini, Yurkiw.) Most of the Appellant's care is received outside of the Facility. (T Ciani.)
4. The Appellant independently performs activities of daily living (ADLs). She can ambulate up to [REDACTED] feet with her [REDACTED] and rollator and utilizes a wheelchair. (Exhibit C; T Appellant, Saini.)
5. By notice dated [REDACTED], 2024, the Facility advised the Appellant of its determination to discharge her on [REDACTED], 2024, because her health has improved sufficiently so that she no longer requires the services provided by the Facility. The notice advised the Appellant that she would be discharged to [REDACTED], an Assisted Living Facility (ALF), located at [REDACTED]. (Exhibit I.)
6. The Appellant's clinical record contains documentation from her interdisciplinary team, including her physician, that the Appellant's condition has improved such that she no longer requires the services of a nursing home, and that discharge to an ALF is appropriate. (Exhibit B; T Ciani, Saini, Villamar, Yurkiw.)
7. On [REDACTED] 2024, the Appellant requested this hearing to contest the Facility's discharge determination.
8. The Appellant remains at the Facility pending the outcome of the hearing.

### APPLICABLE LAW

A residential health care facility, or nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. PHL § 2801(2); 10 NYCRR 415.2(k).

Public Health Law § 2803-z and Department regulations at 10 NYCRR 415.3(i) describe the transfer and discharge rights of residential health care facility residents.

The regulations at 10 NYCRR 415.3(i) state, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(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.

When the facility transfers or discharges a resident for this reason, the facility shall ensure that the resident's clinical record contains complete documentation made by the resident's physician and, as appropriate, the resident's interdisciplinary care team. 10 NYCRR 415.3(i)(1)(ii)(a). The facility must provide sufficient preparation and orientation to residents to ensure safe and orderly discharge from the facility in the form of a discharge plan which address the resident's medical needs and how the needs will be met after discharge. 10 NYCRR 415.3(i)(1)(vi).

The facility 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); State Administrative Procedure Act § 306(1).

### DISCUSSION

The Facility has established that the Appellant is not in need of nursing home care, pursuant to the opinion of its interdisciplinary team, including the Appellant's physician. (Exhibit B; T Ciani, Saini, Villamar, Yurkiw.) The Appellant is cognitively intact (Exhibit A), successfully navigates using her [REDACTED] rollator and wheelchair, and is independent with ADLs. (Exhibit C; T Saini.) The necessity of the discharge is documented in the Appellant's medical record by the resident's treating physician. (Exhibit B; T Yurkiw.) Additionally, the Appellant receives medical care mostly outside of the Facility, and her medical providers will remain consistent. (T Ciani.) Any of her needs will continue to be met by these providers in the community on an outpatient basis. (T Ciani, Yurkiw.)

The Appellant admitted that she can independently perform most tasks but argued that she still requires the Facility's services because she needs assistance with medications and showering. She contends that since she has been a resident, the Facility offered her only inconsistent rehabilitation in two to three week increments at different times and that she still cannot navigate stairs. The Appellant also emphasized that she is [REDACTED] and that it will be difficult to coordinate her own appointments and escorts to those appointments. (T Appellant.)

The Facility staff acknowledge that the Appellant requires set up assistance with showering and administering her medications, and that the Appellant cannot manage staircases independently; however, the discharge plan, for the Appellant to move to an ALF at or around the same location as the Facility, addresses whatever needs the Appellant has. (T Villamar.) An ALF has the means to assist residents with administration of medications and the Facility can coordinate

with the ALF to ensure that the Appellant has set up shower and reading assistance. The ALF has accepted the Appellant, aware that the Appellant cannot maneuver stairs. (T Villamar.) The Appellant currently leaves on pass frequently for medical appointments and some leisure activity, and often is escorted by a family member or friends. (T Ciani; Exhibit D.) The Appellant will continue to have the same providers if discharged to the ALF and can continue to receive assistance to attend appointments with those providers. (T Villamar.)

Director of Social Services Villamar admitted that since the Appellant's admission to the Facility, the Facility and the Appellant have been working towards the goal of discharge to the community. While the original plan was for the Appellant to be discharged to [REDACTED] where most of her family is located, sometime in or around [REDACTED] 2023, the Appellant commenced working with [REDACTED] to locate local housing. (T Villamar.) The Appellant has completed applications and received housing vouchers. In [REDACTED] 2023, a one-bedroom apartment was located for the Appellant, but she declined same. (T Villamar.) In both [REDACTED] and [REDACTED] 2024, two different ALFs accepted the Appellant for placement, but the Appellant refused these options. (T Villamar.)

The Appellant admitted that she refused the apartment that was located for her because it was too small and truly a studio and not a one-bedroom apartment. She contended that the ALFs that accepted her for placement also were not appropriate options. She requests additional time so she can locate an appropriate apartment with the assistance of [REDACTED] and indicated that more apartments will open on [REDACTED]. The Appellant fears that if she is forced to relocate to the designated ALF, [REDACTED] will stop assisting her and that her [REDACTED] [REDACTED] will be discontinued. (T Appellant.) Director of Social Services Villamar assured that even if the Appellant is discharged to the ALF, as contemplated by the Facility's notice, both [REDACTED] and the [REDACTED] would continue to assist the Appellant. The Facility

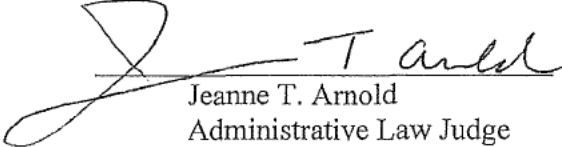
cannot afford to keep the Appellant there awaiting the ideal housing situation because there is no guarantee when that will occur and, in the meantime, the Appellant has no skilled nursing needs. (see Exhibits B, C.)

The Facility has proven that its proposed discharge plan is appropriate as it addresses the Appellant's needs and how those needs will be met after discharge. 10 NYCRR 415.3(i)(1)(vi).

**DECISION**

The Facility established that its determination to discharge the Appellant is authorized and that its discharge plan is appropriate.

Dated: October 23, 2024  
Rochester, New York

  
Jeanne T. Arnold  
Administrative Law Judge