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**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

November 15, 2024

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o The New Jewish Home Manhattan
120 W. 106th Street
New York, New York 10025

Margaret Bondy, DSW
The New Jewish Home Manhattan
120 W. 106th Street
New York, New York 10025

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

The New Jewish Home, Manhattan,
Respondent,

to discharge him from a residential
health care facility.

**Decision
After Hearing**

#DA24-6467

Hearing before: John Harris Terepka
Administrative Law Judge

Held at: New York State Department of Health
by videoconference
October 31, November 15, 2024

Parties: The New Jewish Home, Manhattan
120 West 106th Street
New York, New York 10025
By: Margaret Bondy, DSW
MBondy@jewishhome.org

██████████ ██████████
The New Jewish Home, Manhattan
████████████████████

JURISDICTION

The New Jewish Home, Manhattan (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) and a hearing was noticed for October 31, 2024. (Exhibit ALJ I.)

The Appellant submitted an *ex parte* adjournment request to the Bureau of Adjudication shortly after 10pm on the night before the October 31 hearing. (Exhibit ALJ II.) He was advised by the Bureau of Adjudication that the matter was not adjourned and to make his application at the hearing. The Appellant failed to appear on October 31 but the Respondent, upon being advised of the request, consented to a postponement until November 15. On November 14, the Appellant made a further adjournment request to the Bureau which was again made *ex parte*, was not timely, did not establish good cause, and to which the Respondent did not consent. (Exhibit ALJ III.) The request was not granted and the Appellant failed to appear for the hearing on November 15.

HEARING RECORD

Respondent witnesses:	Berkay Otkur, MD Imran Y. Ali, MD Elizabeth Franco, social work
Respondent exhibits:	1-5
Appellant witnesses:	None
Appellant exhibits:	None
ALJ Exhibits:	I (hearing notice with attached discharge notice) II, III (<i>ex parte</i> adjournment requests)

The hearing was held and recorded by videoconference. (10/31/24, 0h9m; 11/15/24, 0h41m.)

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) & 415.11(d). 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 Respondent 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

Grounds for discharge. The Appellant was admitted to The New Jewish Home, Manhattan for short term post-hospitalization rehabilitation. He has been discharged from physical and occupational rehabilitative therapies. He is independent with activities of daily living (ADL), is fully ambulatory and requires no other assistance. He regularly leaves the nursing home for the entire day and manages his own appointments in the community.

The Appellant's October 30 request to postpone the October 31 hearing alleged he was scheduled for surgery for ████ on ████. On the morning of October 31 he transported himself to a hospital emergency room and failed to appear at the hearing. He presented no evidence that his self-arranged transport to a hospital emergency room on October 31 was caused by or revealed any change in his condition that affected his need for nursing home care, or that his ████ procedure has had any impact upon his need for residential health care. The Respondent's treating physician confirmed in a ████ medical evaluation of the Appellant that the

procedure was uncomplicated and has not impacted his ability to function. (Exhibit 5.) On the Appellant again had himself transported to an emergency room and failed to appear for this hearing.

The Respondent has established and documented in the Appellant's clinical record the professional opinion of the facility's care team, including both of his treating physicians, that he is no longer in need of nursing home care. His treating physicians at the facility have evaluated him and documented in the facility record that he is safe for discharge. (Exhibits 2, 4, 5.)

The Appellant presented no professional medical opinion suggesting that he requires nursing home care. He routinely leaves the nursing home every day, for the entire day. His , 2024 adjournment request stated he will attend "the conference in (Exhibit ALJ III), which he told Respondent's staff was taking place in . While he claims to have ongoing issues with pain and to need additional rehabilitation therapy, he presented no professional medical opinion or confirmation from any physician to support his claim or to establish that he needs to remain in nursing home care for these issues.

The Appellant admits that he uses , but refuses to disclose to the Respondent care team where or in what amount he obtains and uses these narcotics. (Exhibit 3.) He insists that he needs to remain in the nursing home and receive daily rehabilitation therapies from the Respondent to address his risk of and yet will not allow the Respondent care team to monitor or assist in managing this issue. (Exhibit 5.) He offered no professional medical opinion to substantiate his claim that daily rehabilitative therapy in a nursing home is medically

necessary because of his [REDACTED]. His treating physicians at the facility testified that it is unnecessary and inappropriate for the Respondent to provide this treatment for [REDACTED] the nature and extent of which he refuses to disclose.

All of the professional medical opinion in this hearing record is that the Appellant is functional in all of his activities of daily living and does not currently need nursing home care. His care team documented and both his treating physicians at the facility testified at this hearing in support of this view. The Appellant has offered no professional medical opinion to controvert it. The Respondent has established permissible grounds for discharge.

Discharge plan. A nursing home must 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 Respondent has complied with this regulation by making efforts to include the Appellant in discharge planning. (Exhibit 3.) The Appellant, however, has refused to participate in discharge planning or propose any alternative plan, insisting instead that he should remain at the Respondent nursing home until he decides to leave.

The Appellant currently leaves the Respondent's facility on a daily basis, going about his business and returning late in the day. He runs his own errands and schedules his own appointments. Before his hospitalization and referral to the Respondent for short term rehabilitation he lived in his own apartment in an elevator building in [REDACTED] and the discharge plan is to return him to that home. The Appellant claimed at various times that the apartment is not ready for his return because of renovations, but he refused to provide landlord contact information requested by the Respondent's social worker to

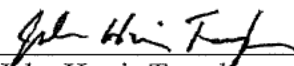
verify this. He offered no evidence that any such work is currently taking place and is an impediment to his return. (Exhibit 3.) It is noted that he made this same claim about his apartment in █ 2023 in a hearing to appeal his discharge from another nursing home. Matter of █ (DA23-5993, issued June 9, 2023).

The Respondent's discharge plan includes referrals for ongoing medical care, which the Appellant already manages on his own, transportation and other logistical assistance to effectuate a safe discharge. Referrals will be provided for outpatient rehabilitation therapies if he wants to pursue them. The Appellant has not identified other options for the Respondent to explore, nor has he demonstrated efforts of his own to develop a plan. The proposed discharge back to his home fulfills the Respondent's obligation to provide a discharge plan that addresses the Appellant's medical needs.

DECISION: Respondent The New Jewish Home, Manhattan 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
November 15, 2024



John Harris Terepka
Administrative Law Judge
Bureau of Adjudication