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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 29, 2024

## CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████ ██████████  
c/o Dr. Susan Smith McKinney Nursing Home  
594 Albany Avenue  
Brooklyn, New York 11203

Sara Freizer, DSW  
Dr. Susan Smith McKinney Nursing Home  
594 Albany Avenue  
Brooklyn, New York 11203

Micah Damsky, Ombudsman  
Center for Independence of the Disabled, New York  
30 3<sup>rd</sup> Avenue, 8<sup>th</sup> Floor  
Brooklyn, New York 11217

**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 / cmg*

Natalie J. Bordeaux  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB: cmg  
Enclosure

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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COPY

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

██████████ ██████████ ██████████

DECISION

Appellant,

from a determination by

DR. SUSAN SMITH MCKINNEY NURSING HOME,

Respondent,

to discharge him from a residential health care facility.

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Before: Tina M. Champion  
Administrative Law Judge

Date: October 25, 2024

Held at: Videoconference via WebEx

Parties: ██████████ ██████████ ██████████  
c/o Dr. Susan Smith McKinney Nursing Home  
594 Albany Avenue  
Brooklyn, New York 11203  
By: Pro se

Dr. Susan Smith McKinney Nursing Home  
594 Albany Avenue  
Brooklyn, New York 11203  
By: Sara Freizer, Director of Social Work

JURISDICTION

By notice dated [REDACTED] 2024, Dr. Susan Smith McKinney Nursing Home (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] [REDACTED] [REDACTED] (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) 415.3(i).

HEARING RECORD

ALJ Exhibits: 1 – Letter with Notice of Hearing and Discharge/Transfer Notice [REDACTED]/24)

Facility Exhibits: 1 – Department of Homeless Services Referral Email  
2 – Nurse Progress Note  
3 – Physician Progress Note  
4 – Social Work Progress Notes  
5 – Resident Admission Record  
6 – OT Discharge Summary  
7 – PT Discharge Summary

Appellant Exhibits: None

Facility Witnesses: Ha Nguyen, Nurse Practitioner  
Margaden Orgela, Assistant Director of Nursing  
Adrian Pinckney, Social Worker  
Sara Freizer, Director of Social Work

Appellant Witnesses: [REDACTED] [REDACTED] [REDACTED] Appellant

Ombudsman: Micah Damsky

A digital recording of the hearing was made. (1:02:02 in duration.)

ISSUES

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

### FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was initially admitted to the Facility for short-term rehabilitation on [REDACTED] 2024. (Exhibit [Ex.] 5; Testimony [T.] Freizer.)

2. The Appellant has a history of [REDACTED] that previously required hospital admission for [REDACTED]. He recently had a [REDACTED] scan of the [REDACTED] and is awaiting guidance from an interventional radiologist as to the next steps in treatment. (T. Nguyen, [REDACTED])

3. The Appellant takes medication for [REDACTED] and [REDACTED]. He has [REDACTED] for which he was offered but declined [REDACTED]. (T. Nguyen, [REDACTED])

4. While at the Facility, the Appellant received occupational therapy (OT) and physical therapy (PT). He was discharged from both therapies on [REDACTED] 2024, after achieving his highest practical level in OT and meeting his goals in PT. (Exs. 6 and 7; T. Orgela.)

5. The Appellant is independent with his activities of daily living (ADLs) and the only nursing assistance he receives is provision of his daily hygiene supplies and medication, which is due to Facility policy. (T. Orgela, [REDACTED])

6. On [REDACTED], 2024, the Facility issued a Discharge/Transfer Notice to the Appellant which proposed discharge to a homeless shelter with the intake address at [REDACTED], [REDACTED], New York. (ALJ Ex. I; Ex. 1.)

7. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant's "functional status has significantly improved and the services of the Specialized Short-Term Rehabilitation unit is no longer required." (ALJ Ex. I.)

8. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.

9. The Appellant has remained at the Facility during the pendency of the appeal.

### APPLICABLE LAW

A residential health care facility, also referred to in the Department's Rules and Regulations as a nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. (PHL § 2801[2][3]; 10 NYCRR 415.2[k].)

A resident may only be discharged pursuant to specific provisions of the Department's Rules and Regulations. (10 NYCRR 415.3[i][1].)

Pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2), a resident may be discharged because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.

A Facility must ensure complete documentation in the resident's clinical record when a resident is discharged. (10 NYCRR 415.3[i][1][ii].)

Facilities are also required to "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].)

Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate.

### DISCUSSION

#### Reason for Discharge

The Appellant is a ■-year-old male who was admitted to the Facility on ■ 2024. He received OT and PT during his stay, and was discharged from both therapies on ■, 2024, after achieving his highest practical level in OT and meeting his goals in PT. Margaden Orgela, Assistant Director of Nursing, testified that the Appellant is independent with his ADLs. She

elaborated that the only assistance the Appellant receives from the Facility is the provision of his daily hygiene supplies and medications, which is due to a Facility policy on medication management. Her testimony is supported by a progress note dated [REDACTED] 2024, in which another registered nurse documented that the Appellant is "alert and oriented x 3 able to let his needs be known and is independent with all his activities of daily living. Resident is able to ambulate independently, bath and dress himself. Resident also feeds himself without any assistances." (Ex. 2.)

Ha Nguyen, Nurse Practitioner, testified that the Appellant's [REDACTED], medication for [REDACTED] and [REDACTED], and [REDACTED] can be managed on an outpatient basis in the community. She further testified, and has documented, that the Appellant is "medically stable for safe discharge to shelter." (Ex. 3.)

The Appellant disputes that discharge is appropriate. He acknowledged that he is largely self-sufficient, testifying that he has learned to take care of himself because the Facility has been unresponsive to his care needs. The Appellant articulated several complaints regarding the Facility and the care he has received, and he stated that he does not want to remain there but that he needs some assistance.

The Appellant has not overcome the evidence offered by the Facility which establishes that skilled nursing care is no longer needed. The Facility has met its burden to show that the Appellant's health has improved sufficiently such that discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2).

#### Discharge Location

The Facility has determined to discharge the Appellant to a homeless shelter. The New York City Department of Homeless Services, Office of the Medical Director, has reviewed the Facility's referral to the shelter, deemed the Appellant to be acceptable for shelter placement and

accepted the Appellant, with the stipulation that he will be sent back if he is not fully independent.

(Ex. 1; T. Freizer.)

Adrian Pinckney, Social Worker, testified that the Facility attempted to arrange for discharge to an assisted living facility prior to identifying the shelter as the proposed discharge location. Mr. Pinckney testified that three assisted living facilities were willing to accept the Appellant but that the Appellant rejected all of them because of location and/or online reviews of the facilities. Mr. Pinckney further testified that, prior to the Facility identifying the homeless shelter for placement, although he repeatedly asked, the Appellant failed to identify other assisted living facilities to which the Appellant wanted to be discharged.

Sara Freizer, Director of Social Work, seconded the testimony of Mr. Pinckney and added that the Facility has been trying to engage the Appellant in discharge planning since [REDACTED] and has been offered no alternative locations. Ms. Freizer testified that the Appellant is an appropriate candidate for placement in either an assisted living facility or a shelter.

The Appellant testified that he wants to decide where he will be discharged. The Appellant testified that he has been trying to locate an assisted living facility that is acceptable to him, but that it takes time. He also testified that he recently began working with Oasis Senior Advisors to assist him in locating a place to live. The Appellant acknowledged that he rejected the assisted living facilities offered by the Facility prior to the Facility proposing discharge to a shelter.

The Facility, through its documentary evidence and testimony from medical professionals, has met its burden to show that the Appellant is functionally appropriate and medically stable to be discharged to a shelter. The Facility reasonably and appropriately identified several assisted living options for the Appellant, which the Appellant rejected, prior to proposing discharge to a shelter. While the Appellant may have valid reasons for not preferring the assisted living facilities

suggested by the Facility, the Appellant no longer needs the services offered by the Facility and the Facility has shown that discharge to a shelter is an appropriate discharge plan.

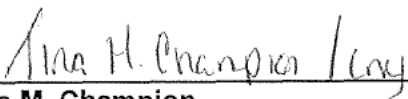
The Appellant is encouraged to reconsider the assisted living facilities previously identified by the Facility prior to being discharged to the shelter.

DECISION

Dr. Susan Smith McKinney Nursing Home has established that its determination to discharge the Appellant is permissible, and that its discharge plan is appropriate.

1. The Appellant may be discharged in accordance with the Discharge/Transfer Notice dated [REDACTED] 2024.
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: October 28, 2024  
Menands, New York

  
**Tina M. Champion**  
**Administrative Law Judge**

TO: [REDACTED]  
c/o Dr. Susan Smith McKinney Nursing Home  
594 Albany Avenue  
Brooklyn, New York 11203  
[REDACTED]

Sara Freizer, Director of Social Work  
Dr. Susan Smith McKinney Nursing Home  
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