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**Department  
of Health**

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, MD, MPH**  
Commissioner

**JOHANNE E. MORNE, MS**  
Executive Deputy Commissioner

November 19, 2024

**CERTIFIED MAIL/RETURN RECEIPT**

[REDACTED]  
c/o Rutland Nursing Home  
585 Schenectady Avenue  
Brooklyn, New York 11203

Neil Pollack, Administrator  
Rutland Nursing Home  
585 Schenectady Avenue  
Brooklyn, New York 11203

**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

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

[REDACTED]

Appellant,

COPY

from a determination by

DECISION

Rutland Nursing Home  
Respondent,

to discharge him from a residential health care facility.

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Hearing Before: Jean T. Carney  
Administrative Law Judge

Held via: Cisco WebEx videoconference

Hearing Date: November 6, 2024

Parties: [REDACTED] Appellant, *pro se*  
C/O Rutland Nursing Home  
585 Schenectady Avenue  
Brooklyn, New York 11203

[REDACTED]  
Rutland Nursing Home, Respondent  
585 Schenectady Avenue  
Brooklyn, New York 11203  
By: Neil Pollack, Administrator  
npollak@kingsbrook.org

## JURISDICTION

By notice dated [REDACTED] 2024, Rutland Nursing Home (Facility or Respondent), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant or Resident) from the Facility on the grounds that his health has improved sufficiently so he no longer needs the services provided by the facility. The proposed discharge location is to the Department of Homeless Services (DHS) intake location at [REDACTED] [REDACTED], New York. 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

In support of its determination, the Facility presented documents (Exhibits 1-6); and the testimony of Avnent Kaur-Anand, Director of Nursing (DON); and Samuel Khalil, Director of Rehabilitation Services. The Appellant testified in his own behalf. The Notice of Hearing with Discharge Notice was admitted into evidence (ALJ I). The hearing was digitally recorded and made part of the record.

## ISSUES

Has the Facility established that the Appellant's discharge is necessary and discharge plan is appropriate?

## FINDINGS OF FACTS

Citations in parentheses refers to the testimony of the witness ("T") at the hearing and exhibits ("Exh") found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejected in favor of the cited evidence. An opportunity to

be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2022, for short term care and [REDACTED] management after hospitalization for a [REDACTED] wound. The [REDACTED] was reversed in [REDACTED] of 2023. (Exhs 4, 5 and 6; T Ms. Kaur-Anand).

2. The Appellant was discharged from physical and occupational therapy on [REDACTED] 2024, and is independent in his activities of daily living (ADLs). The Appellant does not use any assistive devices while ambulating; he has no nursing or clinical needs that require the services of a skilled nursing facility. The Appellant is alert and capable of making decisions regarding his care. (Exhs 1, 2 and 3; T Mr. Khalil and Ms. Kaur-Anand).

3. The Appellant underwent a [REDACTED] on [REDACTED] 2024, with no complications, and has a follow-up appointment scheduled with his provider. (Exh 1).

4. The Facility worked with the Appellant in applying for the [REDACTED] program in 2022. However, the program is currently on hold due to funding issues. The Appellant is working toward finding employment and housing; but does not have any concrete options. He goes out on pass several times a week to attend programs and appointments. (Exh 6; T Mr. Baxter and Ms. Kaur-Anand)

5. The Facility will ensure that the Appellant will be discharged with a supply of his current medications, follow up appointments with his providers, and a social worker will make a wellness check. (T Ms. Kaur-Anand).

#### **APPLICABLE LAW**

A residential health care facility, also referred to as a nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to

residents who do not require hospitalization. (Public Health Law §§ 2801[2] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(1)(i)(a), a resident may only be discharged when the interdisciplinary care team determines that:

- (1) the transfer of discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;
- (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;
- (3) the safety of individuals in the facility is endangered; or
- (4) the health of individuals in the facility is endangered.

Additionally, 10 NYCRR § 415(i)(1)(ii) requires that the facility ensures complete documentation in the resident's clinical record when transferring or discharging a resident under the above circumstances. The documentation shall be made by:

- (a) the resident's physician and, as appropriate, interdisciplinary care team, when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; and
- (b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph.

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or

speculation and constituting a rational basis for decision. (*Stoker v. Tarantino*, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3<sup>rd</sup> Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

### DISCUSSION

The Facility has met its burden of showing that the discharge is necessary, and the discharge plan is appropriate. A discharge plan must “[address] the medical needs of the resident and how these will be met after discharge.” (10 NYCRR § 415.3[i][1][vi]). The evidence establishes that the Appellant’s medical needs can be met in the community, and he no longer needs the services provided in the Facility. The Appellant’s medical record establishes that he is independent in his ADLs and can manage his needs in the community. The evidence demonstrates that the Appellant’s health has improved sufficiently so that he no longer needs the services provided by the facility.

The Facility plans to discharge the Appellant to the DHS intake location at [REDACTED], New York. The Appellant is afraid of being discharged to the shelter system; but has not presented a viable alternative discharge location. The evidence establishes that the discharge plan addresses the Appellant’s medical needs and how they will be met after discharge. The evidence also establishes that the Facility has worked with the Appellant to explore other discharge locations; but at this time, discharge to the shelter system is the only available option.


### ORDER

Rutland Nursing Home has established that its determination to discharge the Appellant is necessary, and that the discharge location is appropriate.


1. The Facility is authorized to discharge the Appellant on or after [REDACTED] [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:** November 18, 2024  
Albany, New York

  
**JEAN T. CARNEY**  
Administrative Law Judge

**TO:** Neil Pollack, Administrator  
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585 Schenectady Avenue  
Brooklyn, New York 11203  
npollack@kingsbrook.org

  
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