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**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

January 28, 2025

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Rockaway Care Center
353 Beach 48th Street
Far Rockaway, New York 11691

Alyssa Braunstein, DSW
Rockaway Care Center
353 Beach 48th Street
Far Rockaway, New York 11691

Michael Bass, Esq.
Abrams Fensterman
54 State Street, Suite 803
Albany, New York 12207

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

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

[REDACTED],

Appellant,

from a determination by

Rockaway Care Center,

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

Hearing before: Kathleen Dix
Administrative Law Judge
January 2, 2025 and
January 6, 2025
By WebEx Videoconference

Parties: Rockaway Care Center
353 Beach 48th Street
Far Rockaway, New York 11691
By: Michael Bass, Esq.
Abrams Fensterman, LLP
54 State Street
Suite 803
Albany, New York 12207

[REDACTED], Appellant, Pro Se
c/o Rockaway Care Center
353 Beach 48th Street
Far Rockaway, New York 11691

JURISDICTION

By notice dated [REDACTED] 2024, Rockaway Care Center, (Respondent), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge / transfer [REDACTED] (Appellant) from care and treatment in its facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) Section 415.3(i).

The hearing was held on January 2, 2025 and January 6, 2025, in accordance with PHL Article 28; 10 NYCRR § 415.3; 42 United States Code of Federal Regulations (CFR) § 483.15; and the New York State Administrative Procedure Act (SAPA); via Webex videoconference. Evidence was received and witnesses were examined. A digital recording of the hearing was made. (3h 5 min in total.)

HEARING RECORD

ALJ Exhibits:

- I. Notice of Hearing (5 Pages)

Respondent's Exhibits:

1. Notice of Discharge (2 Pages)
2. Summary of Care and Discharge Instructions (5 Pages)
3. Physician Progress Notes (3 Pages)
4. Physician's Orders #42 (6 Pages)
5. Brief Interview for Mental Status (BIMS) (1 Page)
6. Social Services Progress Note [REDACTED]/2024 (1 Page)
7. Social Service Statement regarding Discharge (1 Page)
8. OT Discharge Summary (3 Pages)
9. PT Discharge Summary (4 Pages)
10. Social Service Progress Notes for [REDACTED] 2024 (3 Pages)

Appellant's Exhibit:

- A. Email-7 Photographs of Stairs [REDACTED]/25 (1 Page)
- B. Healthfirst Insurance Appeal Denial [REDACTED]/24 (8 Pages)
- C. Scanned Document (37 Pages) which includes
 - a. [REDACTED] Hospital After Visit Summary (4 Pages; Pages 1, 3, 4, and 5 of 21 Pages)
 - b. Physician's Orders #67 (9 Pages)

- c. Appellant Emails (7 Pages)
- d. Physician's Orders #42 (6 Pages)
- e. Social Work Progress Notes [REDACTED] 2024 (11 Pages)
- D. Physician's Orders #49 (6 Pages)
- E. Physician's Orders # 67 (9 Pages)

Respondent's Witnesses:

Adebola Orafidia, MD
Naomi Henry, RN
Ward Tucker, Director of Rehabilitation
Alyssa Braunstein, Director of Social Work

Appellant's Witnesses:

[REDACTED], Appellant

ISSUES

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

FINDINGS OF FACT

1. Respondent Rockaway Care Center 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 Brooklyn, New York.

2. The Appellant is a [REDACTED]-year-old male who was admitted to the Respondent's facility on [REDACTED], 2024 for short term rehabilitation to restore his capacity to walk properly. While at the facility the Appellant's other medical issues were also managed. (Exhibits 2, 7; Recording 1/2/25 @ 34:13, 34:44, 35:02.)

3. The Appellant was evaluated on [REDACTED], 2024 at the facility and was found to have [REDACTED] and was found not to be independent in his activities of daily living (ADL). (Recording 1/2/25 @ 1:02:55-1:03:33.)

4. By notice dated [REDACTED] 2024, the Respondent advised the Appellant of its determination to discharge him on [REDACTED] 2024, on the grounds that his health has improved sufficiently so that he no longer needs the services of the facility.

(ALJ Exhibit I; Exhibit 1).

5. The discharge notice advised the Appellant he would be discharged to [REDACTED], his previous residence.

(ALJ Exhibit I; Exhibit 1).

6. The physician progress note dated [REDACTED], 2024 lists the Appellant as status [REDACTED] and notes that he is clinically stable and medically cleared for discharge. (Exhibit 3.)

7. The occupational therapy discharge summary dated [REDACTED], 2024 lists the reason for discharge as the Appellant having achieved the highest practical level, notes that he has met his long term and short term goals and has reached his prior level of functioning as a result of skilled interventions. (Exhibit 8.)

8. The Appellant is independent in all ADLs, i.e., Hygiene/grooming, toileting, and [REDACTED]. (Exhibit 9; Recording 1/2/25 @ 14:29, 55:30-56:00.)

9. The physical therapy discharge summary dated [REDACTED] 2024 lists the reason for discharge as the Appellant having achieved the highest practical level and notes that he has reached maximum potential with skilled services. (Exhibit 9.)

10. The Appellant is able to perform functional transfers, ambulate [REDACTED] feet on level surfaces, and safely ascend and descend greater than [REDACTED] stairs independently. (Exhibit 9; Recording 1/2/25 @ 1:05:16.)

11. The Appellant timely appealed the Respondent's discharge determination and proposed discharge location.

12. The Appellant remains at the facility pending the outcome of this hearing.

APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, is a residential facility providing nursing care to sick, invalid, infirm, disabled or convalescent persons who need 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 PHL § 2803-z and set forth at 10 NYCRR § 415.3(i) which provides, in pertinent part, that the facility shall:

(1) (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.

...

(vi) 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, and provide a discharge summary pursuant to section 415.11(d) of this Title.

When alleging that a 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, the necessity of the transfer or discharge must be documented in the resident's medical record by the resident's physician. 10 NYCRR § 415.3(i)(l)(ii)(a) and (iii)(b); 42 CFR § 483.15(c)(2)(ii)(A).

Written notice of transfer and discharge initiated by the facility shall be provided at least 30 days prior to the discharge date. PHL § 2803-z(1)(c).

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 Respondent asserts that the Appellant's health has improved sufficiently so that he no longer needs the services of its facility. (ALJ Exhibit I, Exhibit 1.) The Appellant, a [REDACTED]-year-old man, was admitted to the facility on [REDACTED] 2024, for short term rehabilitation following a hospitalization. (Exhibit 2). In his progress note dated [REDACTED] 2024, Dr. Rifat Zaman stated that the Appellant was seen, examined, and his blood work and [REDACTED] were reviewed, opined that the Appellant is clinically stable and medically cleared for discharge, and recommended that the Appellant follow-up with his primary care provider and psychiatrist and continue his current medication. (Exhibit 3.)

At the hearing, Adebola Orafidia, MD testified that he is the supervisor of the providers that directly cared for the Appellant while at the facility and had reviewed the Appellant's lengthy medical history. Dr. Orafidia testified that review of the Appellant's medical record revealed that he had a long history of [REDACTED] [REDACTED] and that he was evaluated at the hospital following a fall. Dr. Orafidia further testified that based upon the Patient Review Instrument, the Appellant was transferred to the Respondent's facility upon the request of the hospital for physical rehabilitation because he "was not able to [REDACTED]". The Respondent provided the Appellant with OT and PT which restored the Appellant's capacity such that he is now able to walk. Dr. Orafidia also testified review of the Appellant's medical record revealed that while at the hospital, the Appellant

developed [REDACTED] pain and it was discovered he had a [REDACTED], but it was determined based upon an [REDACTED] that it was an "[REDACTED]" that the Appellant has had since 2022, and it was not an "[REDACTED]" issue in 2024. Dr. Orafidia acknowledged that the Appellant's other medical issues have been attended to while at the facility but at this time he no longer needs skilled nursing care for his ambulation issues nor for administration of medication regarding his [REDACTED] [REDACTED] (Recording 1/2/25 @ 33:02-34:28, 34:44, 35:02, 36:29, 36:58, 37:10).

On cross-examination, Dr. Orafidia confirmed his testimony that the Appellant's records show that he has had a [REDACTED] consistently since 2022, that he was started on medication in 2022 for the same, and that there is nothing in his medical records that indicates that that medication was discontinued for any reason. Dr. Orafidia stated that the 2024 imaging study did not show the Appellant's [REDACTED] as significant, and that while [REDACTED] do not go away, they do [REDACTED] over time. Dr. Orafidia explained that [REDACTED] will continue to be visible, but they no longer pose any danger. Dr. Orafidia further stated that review of the Appellant's [REDACTED] shows that the [REDACTED] was not acute, *i.e.*, was not causing [REDACTED] [REDACTED], and the doctors determined that no further intervention was needed aside from the Appellant continuing to take the [REDACTED] medication that he had been prescribed. Finally, Dr. Orafidia testified that the Appellant's medical records reveal that his hospitalization prior to his stay at the facility was due to a fall and that he had [REDACTED], and while his medical records noted a history of a [REDACTED] disorder, the records do not indicate that the Appellant's fall was due to a [REDACTED] (Recording 1/2/25 @ 39:47-40:28, 41:24-42:13, 44:05-45:14.)

Naomi Henry, RN, testified that she is a nurse manager at the Respondent's facility on unit [REDACTED] that the Appellant was transferred to unit [REDACTED] to be prepared for discharge within the community, that her unit teaches residents how to take their medication on a timely basis, how to ambulate safely without causing a fall, and how to utilize the skills that they learned in the facility when out in the community. Ms. Henry stated that the Appellant is ambulatory and independent in all his ADLS, he knows his medication, he knows the time to take it, he knows its side effects, and that he comes to the nurses' station to ask for his [REDACTED] and [REDACTED] medications when they are due. (Recording 1/2/25 @ 53:11, 53:54, 54:45, 55:30, 55:40, 56:27, 58:17.)

Ward Tucker, Director of Rehabilitation, testified that upon arrival to the facility, the Appellant received an OT and PT evaluation on [REDACTED] 2024, which revealed [REDACTED], that the Appellant was only able to walk [REDACTED] feet, and that he "was not quite independent" with his ADLs. Mr. Tucker stated that the Appellant was placed on PT and OT five times a week for an undetermined amount of time until he became independent, that the Appellant improved quickly, and that at the time when the Appellant was walking throughout the facility "even without a walker" the therapists had determined that the Appellant was independent and no longer in need of therapy. Mr. Tucker testified that the Appellant received 14 sessions of PT and 13 sessions of OT, which consisted of at least 30 minutes each, that OT was discontinued on [REDACTED]/24 and PT was discontinued on [REDACTED]/24. Mr. Tucker also testified that one of the physical therapists worked with the Appellant on navigating stairs and it was determined that the Appellant is independent in his ability to use stairs. (Recording 1/2/25 @ 1:01:41, 1:02:55-1:04:18, 1:05:02, 1:05:16, 1:09:02.)

The Appellant denies that his admission to the facility was for short term physical rehabilitation. Rather, he contends that the main reason for his admission was for medication administration to prevent [REDACTED] and [REDACTED] and to prevent a fall which could [REDACTED]. The Appellant testified that he does not take his medications on time, resulting in [REDACTED] and recurring falls, that he has been hospitalized in excess of 10 times for random falls, and that these falls could result in a [REDACTED] which could make his [REDACTED] "worse". The Appellant asserts that he cannot take all his medication at one time due to a past [REDACTED] and the [REDACTED], so he breaks up the pills into [REDACTED] and after taking his initial medications he will not remember to take the rest of his medications. The Appellant testified that when first at the facility he was either not receiving certain medication, or was receiving incorrect medication, for his [REDACTED], which caused a recurrence of those symptoms, which symptoms have not yet fully subsided. The Appellant contends that he still needs assistance in taking his medications, and that it is important for him to be administered his medication on time and be in a facility or setting where he is constantly observed until such time as his [REDACTED] gets smaller or becomes manageable, at which time discharge would be safe. The Appellant dismissed the strategy(ies) given to him by the Respondent for remembering to take his medication and stated that there are additional factors that come into play, e.g., he may have "a meal without thinking about it", thus he would be unable to also take medication at the same time due to the [REDACTED]

(Recording 1/6/25 @ 49:01; 49:16, 50:14-51:38, 53:43, 56:39; 59:31-1:01:02; 1:02:28; 1:07:01.)

The Appellant vehemently disagrees with the testimony and documentation regarding his ability to ambulate, and regarding the type, quantity and duration of therapy he received from the Respondent. The Appellant testified that upon admission he did not need a wheelchair or walker to ambulate, but he was required to use them when a cane would have sufficed. Conversely, the Appellant also testified that he has [REDACTED] in his [REDACTED] he [REDACTED] when walking, and that he loses his balance regularly which is why he stays close to the wall when walking. The Appellant testified that his therapy sessions were only 15 minutes long and were insufficient for his safety, based upon medical literature he read regarding preventing [REDACTED] and falls. The Appellant denies ever having had any therapy with regard to navigating stairs and when he inquired of the therapist regarding the same he was told he could receive that therapy as an outpatient. The Appellant stated that the documentation which indicates that he can "walk in excess of" [REDACTED] stairs is "a complete lie". While the Appellant acknowledged that he was originally planning to return to his former residence upon discharge, at this time that residence is not a safe discharge location due to the number of stairs he would have to navigate and his lack of receiving any "stair therapy". (Recording 1/2/25@ 1:05:51; Recording 1/6/25 @ 01:52, 48:17-49:04, 54:03, 54:45, 55:23, 57:01-57:42; 1:03:05; 1:03:22, 1:03:39; 1:05:52; Exhibit A.)

The record supports the Respondent's determination that the Appellant's discharge was necessary. While the Appellant disagrees with the purpose of his admission to the Respondent's facility, the documentary and testimonial evidence establish that he was admitted for short term rehabilitation due to ambulation difficulties, and that he has been successful in rehabilitation in that regard. The Appellant admits to being fully ambulatory and walking about the facility on a regular basis, and the record

establishes that the Appellant is fully ambulatory. Though the Appellant disagrees, the record also establishes that the Appellant can navigate in excess of [REDACTED] stairs.

Even if the Appellant's admission included medication administration as an element thereof, as the Appellant asserts, the testimony of Ms. Henry and of the Appellant himself establishes that he is able to administer his own medication. The Appellant was able to articulate what medications he was taking before his admission, what medications changed upon admission, which medications he believes were discontinued upon admission, perhaps inadvertently, and the consequences of failure to take his medications. The Appellant admits that he was given strategies for remembering to take his medication, but he gave excuses on why they would not work.

The Appellant's testimony was inconsistent and his assertions that the Respondent's witnesses' testimonies and patient records are a falsification is disingenuous. The Appellant denied that he had ambulation issues upon admission or that his admission was for rehabilitation, but he also stated that he has [REDACTED] in his [REDACTED] which he [REDACTED] walking, and that he [REDACTED] his [REDACTED]. The Appellant asserted that he cannot remember to take his medication, but he goes to the nurses' station for his [REDACTED] and [REDACTED] medications when they are due. The Appellant offered nothing more than unsubstantiated allegations that the Respondent's records were falsified or that its witnesses lied.

The evidence presented at the hearing supports the Respondent's determination that the Appellant is no longer in need of nursing home care. The record establishes that the goals for the Appellant upon admission to the Respondent's facility have been met such that he no longer needs the services of a skilled nursing facility. The Appellant is fully ambulatory, is independent in his ADLs, is able to navigate in excess of [REDACTED] stairs,

and is capable of correctly administering his own medication. The Respondent has established that the Appellant's discharge is necessary in accordance with 10 NYCRR § 415.3(i)(1)(i)(a)(2).

Discharge Plan

Alyssa Braunstein, Director of Social Work, testified that she worked with the Appellant on discharge planning, that she and the "whole team" had a meeting with the Appellant on [REDACTED] 2024, that she and the administrator met with the Appellant for a second discharge planning meeting thereafter, and that her intern met with the Appellant for discharge planning on a few occasions. The Appellant had indicated on several occasions that he planned to return to his previous residence upon discharge. The Appellant did tell Ms. Braunstein that he felt a safe discharge would entail him receiving "stair therapy" to a point where he would feel comfortable navigating stairs well enough to not fall. (Recording 1/6/25 @ 3:09, 5:42, 6:17, 12:39, 19:58–20:17.)

The Appellant acknowledged that he was originally planning to return to his former residence upon discharge, but at this time he does not feel that it is a safe discharge location. The Appellant contends that he still needs assistance in taking his medications and he needs to be in a facility or setting where he is constantly observed so he takes his medication on time, and because of the number of stairs he would have to navigate at his prior residence. The Appellant asserts that once his [REDACTED] [REDACTED] gets smaller or becomes manageable, and he receives stair therapy, his discharge from the facility to his prior residence will be safe. (Recording 1/6/25 @ 56:39, 1:02:28, 1:03:22, 1:05:52; Exhibit A.)

The Appellant also objects to his discharge because he did not get 30 days-notice that he would be discharged, thus he was not given sufficient time to plan for a safe discharge, and the only other discharge location that was offered to him was a shelter, which he declined. (Recording 1/2/25 @ 1:16:01; Recording 1/6/24 @ 24:13, 1:09:25-1:12:16, 1:19:34.)

The evidence presented at the hearing supports that the Appellant's return to his prior residence, which is available, is an appropriate discharge plan. His stay at the facility has increased his functional abilities to the point that he no longer has skilled nursing needs. His prior residence is available, the Appellant indicated a desire to be discharged there, and there is no evidence showing that there are in excess of [REDACTED] stairs to be navigated at any one time at that prior residence. (Exhibit A.)


Still, the Appellant was entitled to written notification of transfer or discharge at least 30 days prior to such transfer or discharge in order to provide him with sufficient preparation and orientation to ensure a safe and orderly discharge from the Respondent's facility. PHL § 2803-z(1)(c); 10 NYCRR §§ 415.3(i), (iii) and (iv). The Respondent has completely disregarded the statute by issuing a Notice of Discharge which was dated [REDACTED] 2024, with a planned discharge date of [REDACTED], 2024. Under this notice, the Appellant's discharge would not have been appropriate until on or after [REDACTED] 2025. However, given that [REDACTED] 2025 has since passed, and the Appellant has now had more than 30 days' notice of his discharge, he has had sufficient time to prepare for his discharge and his discharge will be allowed.

DECISION

Rockaway Care Center has established that the discharge of the Appellant is necessary and that the discharge plan is appropriate.

1. Rockaway Care Center is authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED] 2024 on or after [REDACTED] 2025.
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: Menands, New York
January 28, 2025



Kathleen Dix
Administrative Law Judge

To: Rockaway Care Center
353 Beach 48th Street
Far Rockaway, New York 11691

[REDACTED], Appellant
c/o Rockaway Care Center
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