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**Department  
of Health**

**KATHY HOCHUL**  
Governor

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

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

February 7, 2025

**CERTIFIED MAIL/RETURN RECEIPT**

[REDACTED]  
c/o Albany Medical Center  
43 New Scotland Avenue  
Albany, New York 12208

Nicole Lewis, DNS  
The Grand at Barnwell  
3230 Church Street  
Valatie, New York 12184

Rebecca Vincent, Social Work Manager  
Albany Medical Center  
43 New Scotland Avenue  
Albany, New York 12208

[REDACTED]

Barbara Phair, Esq.  
Abrams Fensterman, LLP  
3 Dakota Drive, Suite 300  
Lake Success, New York 11042

**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*

Natalie J. Bordeaux  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB: cmg  
Enclosure

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

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

██████████,

Appellant,

from a determination by

THE GRAND AT BARNWELL,

Respondent,

to discharge him from a residential health care facility.

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DECISION

Before: Tina M. Champion  
Administrative Law Judge

Dates: January 23, 2025  
January 30, 2025

Held at: Videoconference via WebEx

Parties: ██████████  
c/o Albany Medical Center  
43 New Scotland Avenue  
Albany, New York 12208  
By: Rebecca Vincent, Social Work Manager  
youngr2@amc.edu

The Grand at Barnwell  
3230 Church Street  
Valatie, New York 12184  
By: Barbara Phair, Esq.  
Abrams Fensterman, LLP  
3 Dakota Drive, Suite 300  
Lake Success, New York 11042  
bphair@abramslaw.com

JURISDICTION

By notice dated [REDACTED] 2025, The Grand at Barnwell (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [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: I – Adjudication Letter (1/21/25) with Notice of Hearing  
II – Adjudication Letter (1/24/25)

Facility Witnesses: Madhu Padi, M.D., Psychiatrist  
Angela Sinon, Psychiatric Nurse Practitioner  
Edwin Afena, Physician Assistant  
Nicole Lewis, Director of Nursing  
Jaimee Hawk, Director of Social Work  
Michael Hotz, Nursing Home Administrator

Facility Exhibits: 1 – Admission Record  
2 – Hospital Notes  
3 – Hospital Notes  
4 – Facility Notes  
5 – CMS Long-Term Care Surveyor Guidance, Ref: QSO-25-12-NH  
6 – Facility MD Note  
7 – Hospital Notes

Appellant Witnesses: John Shultz, M.D., Associate Medical Director (Hospital)  
Rebecca Vincent, Manager of Social Work (Hospital)

Appellant Exhibits: A – Psychiatry Note

Also Present: [REDACTED], Appellant  
[REDACTED], Appellant's [REDACTED] and Surrogate Decision Maker  
[REDACTED], Appellant's [REDACTED]  
Gina Gulotta, Unit Manager (Facility)  
Joelene Kavanaugh, Assistant Nursing Home Administrator (Facility)  
Sundershan Dang, M.D. (Facility)  
Beth Doty, Assistant Administrator of Case Management (Facility)  
Sarah Ciotoli, Social Worker (Hospital)  
Rebecca Sanders, Social Worker (Hospital)  
Alycia Gregory, Director of Case Management (Hospital)  
Melissa Yalden, Continuum of Care Specialist (Hospital)  
Abigail Belasen, M.D., Attending Physician (Hospital)  
Katy Nagy, RN (Hospital)

Kelly DeGonza, Manager of Case Management (Hospital)  
Carter Lawrence, Patient Care Associate (Hospital)

A digital recording of the hearing was made. (1/23/25 – 22:41 in duration; 1/30/25 – 1:33:04 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 admitted to the Facility on [REDACTED], 2024, from a hospital. He has multiple diagnoses, including [REDACTED]. (Facility Exhibit [Ex.] 1; Testimony [T.] Padi, Sinon.)

2. The Facility has transferred the Appellant to the hospital for evaluation on multiple prior occasions since his admission due to incidents of [REDACTED]. Each time, the Appellant was cleared and returned to the Facility. (Facility Ex. 4; T. Afena.)

3. The Appellant's behaviors have escalated since his admission to the Facility. (T. Afena, Lewis.)

4. On [REDACTED] 2025, the Facility transferred the Appellant to Albany Medical Center (Hospital) for evaluation following an episode of [REDACTED] at the Facility in which he [REDACTED] assaulted nursing staff and made [REDACTED]. (Facility Ex. 4.)

5. Also on [REDACTED] 2025, the Facility issued a Transfer/Discharge Notice documenting discharge on that date to Albany Medical Center and noting the basis as the Appellant's needs cannot be met in the Facility, citing [REDACTED] [REDACTED] and [REDACTED] by the Appellant. (ALJ Ex. I.)

6. The Appellant was cleared by the Hospital for return to the Facility and the Facility refuses to readmit the Appellant. (T. Shultz, Vincent.)

7. The Appellant has remained at the Hospital during the pendency of the appeal.

### APPLICABLE LAW

A residential health care facility, also referred to in the Department of Health 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 of Health Rules and Regulations. (10 NYCRR 415.3[i][1].) Excluding reasons of nonpayment and facility closure, a resident may be transferred only when:

- (1) the transfer or 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;

(10 NYCRR 415.3[i][1][i][a].)

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

The Facility called several witnesses to testify to support its position that it cannot readmit the Appellant because he is a danger to others. Madhu Padi, M.D., Psychiatrist, testified that the

Appellant has [REDACTED] from [REDACTED] and that he has the potential to be upset and to be attached by others that he upsets. Dr. Padi testified that the Appellant can [REDACTED] at caregivers, having done so even the day before the hearing while at the Hospital. Dr. Padi testified that he spoke with the psychiatrist at the Hospital, Dr. Tassinari, and that the Hospital has been unable to stabilize the Appellant. Dr. Padi testified that the Facility can only give its residents as-needed [REDACTED] for a short-term period.

Angela Sinon, Psychiatric Nurse Practitioner, testified that the Appellant has episodes of [REDACTED] alternating with [REDACTED]. She testified that he is sometimes pleasant but can then become [REDACTED] due to [REDACTED]. Ms. Sinon testified that, based on a conversation with Dr. Tassinari, the Appellant is still having behaviors and requiring as-needed medications to control [REDACTED]. Ms. Sinon testified that the Facility cannot use as-needed [REDACTED] for the Appellant as they would be considered a restraint. She further testified that the Appellant is a danger to other residents.

Edwin Afena, Physician Assistant, testified that the Appellant has been [REDACTED] while in the Hospital, and has injured his [REDACTED], necessitating security to manage the Appellant. Mr. Afena testified that the Facility does not have security to handle the Appellant's episodes of [REDACTED]. Mr. Afena testified that the Appellant is a danger to himself and to others.

Nicole Lewis, Director of Nursing, testified that the Facility was unaware of the Appellant's [REDACTED] when he was admitted in [REDACTED] 2024, and that his behaviors started [REDACTED] in [REDACTED] 2024. Ms. Lewis testified that the Appellant caused another resident to be [REDACTED] following an incident of [REDACTED] and that he has caused injury to staff members. Ms. Lewis testified that the Appellant's medication regimen is ineffective. Ms. Lewis testified that the Facility has made several attempts to manage the Appellant's behaviors, including medication adjustments, ruling out other medical issues such as a [REDACTED], assigning a [REDACTED] for a short time, utilizing Facility [REDACTED] support, and reaching outside of the Facility for

support including having the Appellant admitted to [REDACTED] Hospital for a two-week stay in [REDACTED] 2024. Ms. Lewis testified that the Facility has attempted during the last few months to locate a Facility better able to meet the Appellant's needs but that it has been unsuccessful.

Jaimee Hawk, Director of Social Work, testified that the Facility has contacted 29 different Facilities in an attempt to locate another location for the Appellant to reside. She testified that some of those facilities are equipped to manage residents [REDACTED] and behavioral health issues.

Michael Hotz, Nursing Home Administrator, testified that he has reviewed the Hospital records from the Appellant's current admission and that the Facility is unable to administer the Appellant's as-needed [REDACTED] medications, and cannot provide a [REDACTED] or lawfully restrain the Appellant.

The Appellant offered the testimony of John Shultz, M.D., Associate Medical Director at the Hospital. Dr. Shultz testified that the Appellant has been medically cleared for discharge from the Hospital. Dr. Shultz testified that in-patient [REDACTED] admission is not recommended for the Appellant. He further testified that the Appellant is stable in that he is at his baseline. Dr. Shultz acknowledged that the Appellant is [REDACTED] and that he may pose a risk to others during his episodes of [REDACTED]. Dr. Shultz testified that the Hospital doubled the dosage of the Appellant's oral [REDACTED] on [REDACTED], 2025, and started him on [REDACTED] on [REDACTED], 2025, to help manage his [REDACTED]. Dr. Shultz testified that it would take time for the [REDACTED] to become effective in the Appellant's body and that his medication can be monitored and managed outside of the Hospital. Dr. Shultz also testified that the Appellant has an order for [REDACTED] as needed. Dr. Shultz testified that a goal of no [REDACTED] is not achievable for the Appellant, particularly in a hospital environment as that can [REDACTED].

Rebecca Vincent, Manager of Social Work, testified that the Hospital has sent out many referrals to other nursing homes, but none have accepted the Appellant.

The Facility's witnesses and the Appellant's witnesses fundamentally disagree on whether the Appellant is stable such that he is ready to be discharged back to the Facility. It is undisputed from the testimony and the Appellant's hospital admission medical records that the Appellant was, up until the time of this hearing, acting [REDACTED] with incidents of [REDACTED] (See Facility Exs. 2, 3, 7; Appellant Ex. A.) The Appellant does not meet the criteria for in-patient [REDACTED] admission at the Hospital. The Hospital has, despite the Appellant's episodes of [REDACTED] and [REDACTED] cleared him to be discharged. While the Appellant has significant need for management of his behaviors, he does not need to be in the Hospital and is ready for discharge.

The Facility is understandably concerned with keeping its staff and other residents at the Facility safe from episodes of aggression by the Appellant. A facility that is unable to meet the needs of a resident must undertake to develop an appropriate discharge plan. It is well established that discharge to a hospital, an acute care facility, is not an appropriate discharge plan, nor does it address how Appellant's medical needs will be met after discharge from the Hospital as required under applicable laws and regulations. The Facility previously accepted the Appellant into its care and cannot simply abandon its obligation to the Appellant by sending him to a hospital and refusing to re-admit him after he has been cleared to return. Nor can the Facility transfer its obligation to locate an appropriate discharge location for the Appellant to the Hospital if the Facility becomes unable to properly care for him. The Facility has failed to develop an appropriate discharge plan for the Appellant.

The Appellant currently has no acute condition, psychiatric or otherwise, requiring hospital admission. The circumstances of this case are, however, unique in that the Facility has shown that the Appellant has been a danger to others within the Facility and at the Hospital, and Dr. Shultz has acknowledged that the Appellant may pose a danger to others within the Facility during episodes of [REDACTED] if he returns to the Facility. The Facility also does not have the ability to administer [REDACTED] [REDACTED]. It will therefore have to rely on other means, such

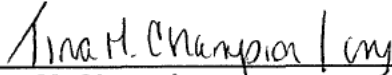
as medication management with adjustments to the Appellant's [REDACTED] or other prescribed medications and/or employing an appropriate 1:1 sitter or even security to deal with Appellant's [REDACTED] as means of ensuring the safety of the Appellant and other individuals in the Facility until such time as it develops an appropriate discharge plan for the Appellant. While the Appellant is ready for discharge and should no longer occupy a bed in an acute care Facility, it is reasonable to allow the Facility an additional short period of time to either find an alternative appropriate discharge location or make necessary accommodations, such as employing a [REDACTED] or security, within the Facility.

#### DECISION

The Grand at Barnwell has not established that its discharge plan is appropriate.

1. The Grand at Barnwell is directed to readmit the Appellant to the first available semi-private bed available after [REDACTED], 2025, prior to admitting any other person to the Facility, pursuant to 10 NYCRR 415.3(i)(2)(i)(d).
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: February 7, 2025.

  
\_\_\_\_\_  
Tina M. Champion  
Administrative Law Judge

TO:

[REDACTED]  
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Albany, New York 12208

[REDACTED]  
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