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**Department  
of Health**

**KATHY HOCHUL**  
Governor

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

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

March 12, 2025

**CERTIFIED MAIL/RETURN RECEIPT**

██████ ██████  
c/o Stony Brook University Hospital  
101 Nicholls Road  
Stony Brook, New York 11794

Ann Marie Karazia, DSW  
Apex Rehab Care Center  
78 Birchwood Drive  
Huntington Station, New York 11746

Denny Brown, Esq.  
(BY EMAIL ONLY)

Jamie Barbirino, LMSW  
Stony Brook University Hospital  
101 Nicholls Road  
Stony Brook, New York 11794

Carolyn Hill, Esq.  
(BY EMAIL ONLY)

**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: nm  
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

COPY

██████████

Appellant,

from a determination by

DECISION  
AND ORDER

Apex Rehabilitation & Care Center,

Respondent,

to transfer him from a residential health care facility.

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Hearing Before:

Kimberly A. O'Brien  
Administrative Law Judge (ALJ)

Hearing Date:

March 6, 2025  
Via Webex Videoconference

Parties:

Apex Rehabilitation & Care Center  
By: Ann Marie Karazia, Director of Social Work  
78 Birchwood Drive  
Huntington Station, New York 11746

██████████ Resident  
Apex Rehabilitation & Care Center  
By: Denny Brown, Esq.  
Resident's ██████████

## JURISDICTION

Pursuant to Public Health Law §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), Apex Rehabilitation & Care Center (Respondent or Facility) is a residential health care facility/nursing home 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.

Resident rights are set forth at 10 NYCRR 415.3, *inter alia*, it provides that before a facility discharges a resident it shall notify the resident and/or their representative of the transfer/discharge and its reasons in writing and in a language and manner the resident can understand and must be provided before transfer/discharge; state the reason the transfer/discharge is necessary; and have a discharge plan including identifying a discharge location that is available and appropriate to meet the resident’s needs. A resident who believes the facility has erroneously determined that the transfer/discharge is necessary has the right to an administrative hearing. The facility has the burden of proving that the transfer/discharge is necessary and the discharge plan is appropriate.

## STATEMENT OF THE CASE

On [REDACTED], 2025, Respondent transferred [REDACTED] [REDACTED] Appellant ( Resident) from the care and treatment in its facility to Stony Brook University Hospital, Stony Brook, New York (Hospital). The Facility issued a discharge notice dated [REDACTED] 2025. The Resident appealed the discharge determination to the New York State Department of Health (DOH) and has remained in the Hospital awaiting the hearing and the ALJ’s decision. The hearing was held on March 6, 2025 and a recording was made and is part of the record.

The following witnesses testified on behalf of Respondent: Gina Iovino, RN – Facility Director of Nursing; and Vitaliy Khandro, M.D. – Facility Psychiatrist. Denny Brown, Esq. (Resident’s [REDACTED] testified on behalf of the Resident. Ramnik Gill, M.D. – Hospital Physician and Jamie Barbirino, LMSW– Hospital Social Work testified about the Resident’s condition.<sup>1</sup>

Documents were admitted into evidence by the Administrative Law Judge (“ALJ”): ALJ Exhibit 1–Notice of Hearing & February 6, 2025 Notice of Transfer or Discharge; and ALJ Exhibit 2 –*Dear Nursing Home Administrator Letter* “DAL– NH 19-07- Notice of Transfer or Discharge and Permitting Residents to Return Redistributed.”

#### ISSUES

Did the Respondent establish that the discharge is necessary, and provide an appropriate discharge plan?

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#### FINDINGS OF FACT

Citations in parentheses refer to testimony (T. ) and exhibits (Ex.) found persuasive in arriving at a particular finding.

1. Respondent operates a residential health care facility located in Huntington Station, New York. ALJ Ex.1.
2. The Resident is a [REDACTED] year old male. His diagnoses includes [REDACTED] and he uses a wheelchair to ambulate. ALJ Ex. 1; T. Khaldarov, Iovino.
3. On [REDACTED] 2025, at approximately 4:00am, the Resident wandered into another resident’s room, who is an alert and oriented female. She reported that the Resident lifted her bed

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<sup>1</sup> Carolyn Hill, Esq. Hospital Counsel asked questions of Hospital employees.

sheet and [REDACTED] ([REDACTED], 2025 incident.)<sup>2</sup> T. Iovino, Khaldarov.

4. The Facility transferred the resident to the Hospital on [REDACTED], 2025.

5. The Facility issued a discharge notice dated [REDACTED] 2025. Respondent stated the discharge is “Necessary because the safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident” and listed the Hospital as the discharge location.

ALJ Ex. 1, *See* ALJ Ex. 2; T. Iovino.

6. The Resident has been at the Hospital for more than a month and is awaiting a discharge determination. T. Gill, Barbarino.

#### DISCUSSION

Ms. Iovino who is the Facility’s Director of Nursing testified that in [REDACTED] of 2023 the Resident [REDACTED] ([REDACTED] 2023 incident.) The Facility called the police, the incident was reported to DOH, and the Resident was sent to a hospital. When the Resident returned to the Facility, he was moved to a different room away from the resident and the Facility implemented a plan to monitor the Resident more closely throughout the day and intervene/redirect the Resident when necessary. Because the [REDACTED] 2025 incident occurred in the early morning hours there was limited staff on duty, and they were unaware that the Resident was up and out of bed. When the resident cried out staff immediately responded. They found the Resident in her room, and he refused to leave and had to be physically removed by a male staff member. The police were called, the incident was reported to

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<sup>2</sup> The Facility has said that the female resident involved in the [REDACTED] incident has been talking with the police and may seek a protective order /restraining order (order). The incident occurred well over a month ago and to date the Facility has failed to produce charges, an order or any other documentation that supports a finding that the Resident cannot return to the Facility.

DOH, and the Resident was sent to the Hospital. Ms. Iovino believes that the Facility cannot meet the Resident's needs, and he should be placed in a [REDACTED] facility.

Dr. Khaldarov, who is the Facility [REDACTED] testified that it is common for a resident with [REDACTED] to exhibit [REDACTED]. He has treated the Resident and is aware of the Resident's negative behaviors and the [REDACTED] 2023 and [REDACTED], 2025 incidents (behaviors/incidents.) Dr. Khaldarov does not dispute that since the Resident's admission to the Hospital he has been in a medical unit with female patients and female caregivers, his medications/dosages have not changed, he has not had any behaviors/incidents, and he has not required chemical or physical restraints. Dr. Khaldarov offered that the Hospital is a different setting, and the Resident has less social activity and less freedom to move around and suggested that if the Resident returns to the Facility the behaviors/incidents may become more frequent. Dr. Khaldarov conceded that the two incidents that led the Facility to send the Resident to a hospital occurred more than a year apart and that the Resident could benefit from additional monitoring at the Facility, especially during the overnight and early morning hours.

Dr. Gill, testified that upon admission the Hospital [REDACTED] staff assessed the Resident and found that he was not in need of [REDACTED] care and there was no need to place him in a [REDACTED] unit. The Resident has been in a medical unit since his admission to the Hospital and his medications/dosages have not been changed and use of chemical or physical restraints has not been necessary. She sees the Resident twice a day on her rounds and his behavior is appropriate. The Resident has not had any behaviors/incidents during his stay. Dr. Gill opined that the Resident is stable and ready for discharge and the Facility can meet the Resident's needs.

Jamie Barbarino, Hospital Social Worker testified that the Resident's unit has both male and female patients and many of the Resident's caregivers are female. He is sharing a room with

another patient, and she observes them chatting with one another. She encounters the Resident at least once a day on the unit, he is often out of bed sitting in his wheelchair. She does not necessarily interact with him because there is no need for her to provide socialization. The Resident is able to make his needs known and he has not attempted to enter another patient's room or elope from the unit. No behaviors/incidents have been reported during his stay. Ms. Barbarino's job includes discharge planning and in her professional opinion the Facility is an appropriate placement for the Resident.

The Resident's [REDACTED] testified that he would like the Resident to return to the Facility. He stressed that his [REDACTED] has no idea what he is doing, and these are isolated incidents. He believes his [REDACTED] is happy residing at the Facility and his needs can be met there.

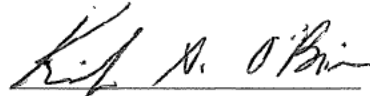
#### CONCLUSIONS

The Resident is not a candidate for placement in a [REDACTED] facility. During his prolonged stay at the Hospital the Resident has been in a medical unit and his medications/dosages have not been changed and he has not had any behaviors/incidents. The two incidents that led the Resident to be sent to a hospital were more than a year apart. Dr. Khaldarov's assertions that the behaviors/incidents will be more frequent upon the Resident's return to the Facility are not supported by the record. While Respondent's witnesses described challenges managing the Resident's care, the Facility had an effective care plan in place at the time of the [REDACTED], 2025 incident except that they were not closely monitoring him during the overnight and early morning hours. Admittedly, if the Facility staff had known the Resident was up and out of bed they would have intervened/redirected the Resident. Respondent has failed to prove the Resident is currently a danger to himself or others and that the Facility cannot meet his needs.

ORDER


Respondent must readmit the Resident to its Facility to the first available semiprivate bed before it admits any other resident.

Dated: Albany, New York  
March 12, 2025

  
Kimberly A. O'Brien  
Administrative Law Judge

To: Ann Marie Karazia, Director of Social Work  
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