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**Department
of Health**

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

January 22, 2025

CERTIFIED MAIL/RETURN RECEIPT

Christina Osorio, DSW
Highland Care Center
91 31 175th St.
Jamaica, New York 11432

[REDACTED]
c/o Highland Care Center
91 31 175th St.
Jamaica, New York 11432

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

COPY

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



Appellant,

DECISION

from a determination by

Highland Care Center


to discharge her from a residential health care facility.

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

Held at: Videoconference via WebEx

Dates: January 22, 2025

Parties:


c/o Highland Care Center
91 31 175th Street
Jamaica, New York 11432

By: Pro se

Bari Goltzman, LTC Ombudsman – Providing Support
bgoltzman@cidny.org

Highland Care Center
91 31 175th Street
Jamaica, New York 11432
By: Christina Osorio, DSW
cosorio@highlandcare.org

On [REDACTED] 2025, Highland Care Center (Facility) a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) 415.3(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR. The ALJ admitted the Notice of Hearing and the [REDACTED] 2025 Discharge Notice, ALJ Exhibit 1. The Facility offered the [REDACTED] 2025 Physician Notes, which was admitted into the record, Facility Exhibit 1. The Facility presented three witnesses: Joanna Bunell, Director of Rehabilitation; Amar Karim, Nurse Manager; and Christina Osorio, DSW. The Appellant did not present any exhibits and testified on his own behalf. A digital recording was made of the proceeding.

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility [REDACTED], 2020. Facility Exhibit (Ex.) 1; Testimony (T.) Ossorio.
2. The Appellant is independent with all activities of daily living (ADLs) including dressing, grooming, bathing, toileting, transfers. The Appellant ambulates without use of assistive devices and goes out on pass from the facility. T. Bunell, Karim, Ossorio.
3. The [REDACTED] 2025 Discharge Notice states that the Appellant's health has improved sufficiently such that the Appellant no longer requires the services of the Facility. The proposed discharge is to an assisted living facility (ALF), [REDACTED] [REDACTED] New York [REDACTED]. ALJ Ex. 1.
4. The Appellant timely appealed the Facility's discharge determination and proposed discharge location. The Appellant has remained at the Facility during the pendency of the appeal.

ISSUES

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

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]). The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415(i)(1)(i)(a)(2), which states:

“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.”

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

DISCUSSION

The Facility's discharge notice states that the Appellant's health has improved and he no longer requires the services it provides, and that the Appellant be discharged to [REDACTED]. The Appellant is medically stable and independent with his ADLs, including making his own decisions and he has gone out on pass from the Facility. Ms. Ossorio testified that the Appellant has applied for Social Security benefits and the decision is pending. She is aware that the Appellant would like to be discharged to an ALF in [REDACTED]. She applied to a number of ALFs in [REDACTED], but the Appellant was denied placement because his Social Security is pending. She identified ALFs in [REDACTED] and [REDACTED] that might accept the Appellant with Social Security pending. [REDACTED] in [REDACTED] has accepted the Appellant with Social Security pending.

The Appellant appealed the discharge and went forward with the hearing to have the determination in writing. He is familiar with the services ALFs provide and believes that discharge to an ALF is appropriate. The Appellant testified that he wishes to be placed at an ALF in [REDACTED], where his friends and family reside. He understands that [REDACTED] accepted him with Social Security pending and once approved he can apply to ALFs in [REDACTED].

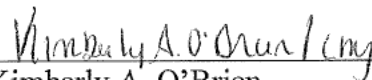
The Appellant's health has improved sufficiently such that he no longer needs the services it provides and the proposed discharge to [REDACTED] is available and appropriate to meet the Appellant's needs.

DECISION

The Facility has established that its determination to discharge the Appellant was correct, and that its discharge/transfer location is appropriate.

1. The appeal is DENIED, the Facility is authorized to discharge the Appellant pursuant to the [REDACTED] 2025 Discharge Notice.
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: Albany, New York
January 22, 2025



Kimberly A. O'Brien
Administrative Law Judge