

cc: DOH.sm.DCAppeals@health.ny.gov by scan
SAPA File
BOA by scan



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

March 20, 2025

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o The Phoenix Rehabilitation
and Nursing Center
140 Saint Edwards Street
Brooklyn, New York 11201

Tatyana Polyak, Director of Social Work
The Phoenix Rehabilitation
and Nursing Center
140 Saint Edwards Street
Brooklyn, New York 11201

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

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

[REDACTED]

DECISION

Appellant,

from a determination by

THE PHOENIX REHABILITATION
AND NURSING CENTER,

Respondent,

to discharge her from a residential health care facility.

Before: Tina M. Champion
Administrative Law Judge

Date: March 13, 2025
The record closed March 20, 2025

Held at: Videoconference via WebEx

Parties: [REDACTED]
c/o The Phoenix Rehabilitation and Nursing Center
140 Saint Edwards Street
Brooklyn, New York 11201
By: Pro se

The Phoenix Rehabilitation and Nursing Center
140 Saint Edwards Street
Brooklyn, New York 11201
By: Tatyana Polyak, Director of Social Work

JURISDICTION

By notice dated [REDACTED] 2025, The Phoenix Rehabilitation and Nursing Center (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 – Letter with Notice of Hearing and Transfer/Discharge Notice
II – Facility email dated [REDACTED]/25

Facility Exhibits: 1 – Admission Record
2 – BIMS History
3 – Physician Progress Note
4 – Social Work Summary
5 – Progress Notes
6 – Department of Homeless Services Referral
7 – Therapy Discharge Summaries

Facility Witnesses: Tatyana Polyak, Director of Social Work
Lourdes Amato, Social Worker

Appellant Exhibits: None

Appellant Witnesses: [REDACTED] Appellant

A digital recording of the hearing was made. (45:23 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 female who was initially admitted to the Facility on [REDACTED] 2023, for short-term rehabilitation. (Exhibit [Ex.] 1; Testimony [T.] Amato.)
2. The Appellant received physical therapy (PT) and occupation therapy (OT) while at the Facility. She was discharged from both therapies on [REDACTED], 2024, after completing restorative rehabilitation. (Ex. 7; T. Amato.)
3. The Appellant is alert and oriented to person, place and time. She is independent in all her activities of daily living (ADLs) and can ambulate [REDACTED] feet with a rolling walker. (Exs. 2, 3, 4, 7; T. Amato.)
4. The Appellant is able to manage her medications, which are administered orally or via a [REDACTED] (T. Polyak.)
5. The Appellant has no skilled nursing needs and is medically stable for discharge to the community. (Ex. 3; T. Amato, Polyak.)
6. The Facility has attempted to work with the Appellant to discharge her to an assisted living facility and the Appellant has declined to be discharged to that setting. (T. Amato.)
7. On [REDACTED] 2025, the Facility issued a Transfer/Discharge Notice to the Appellant which proposed discharge to the women's shelter intake in [REDACTED]. (ALJ Ex. I.)
8. The Transfer/Discharge Notice states that the Appellant will be discharged on [REDACTED] 2025, because her health has improved sufficiently so that she no longer needs the services provided by the Facility. (ALJ Ex. I.)
9. The Appellant timely appealed the Facility's discharge determination.
10. At the conclusion of the hearing, the Appellant agreed to work with the Facility to effectuate discharge to an assisted living facility. Upon agreement by the parties, issuance of a

decision was held in abeyance until March 20, 2025, to allow the parties time to locate an assisted living facility.

11. On [REDACTED], 2025, the Facility advised the Bureau of Adjudication that the Facility made a referral to an assisted living facility but that the Appellant declined discharge to that location because "she needs a private room and does not wish to contribute toward her living arrangements." (ALJ II.) No further communication was received from either party.

12. The Appellant has remained at the Facility during the pendency of the appeal.

APPLICABLE LAW

A residential health care facility, also referred to in the Department's 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's Rules and Regulations. (10 NYCRR 415.3[i][1].)

Pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2), a resident may be discharged because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.

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 has determined to discharge the Appellant to the women's shelter intake in [REDACTED] New York for placement in a homeless shelter. The Appellant's Social Worker at the Facility, Lourdes Amato, testified that the Appellant was admitted to the Facility in [REDACTED] 2023 for short-term rehabilitation. Ms. Amato testified that the Appellant completed restorative rehabilitation, having made remarkable progress. She testified that the Appellant was discharged from PT and OT in [REDACTED] 2024. Ms. Amato testified that the Appellant has no skilled nursing needs, is independent in all her ADLs, and is able to ambulate [REDACTED] feet with a rolling walker. Ms. Amato testified that she has attempted to engage the Appellant in discharge planning and that the Appellant has refused to consider an assisted living facility because she prefers to find a three-bedroom apartment in [REDACTED] or [REDACTED]. Ms. Amato testified that the intake shelter will be able to accommodate the Appellant and meet her needs for a placement that is accessible with use of a rolling walker.

The Facility's Director of Social Work, Tatyana Polyak, testified that the Appellant is able to manage her own medications and that the Facility will make all the necessary arrangements for the Appellant to receive medications and a rolling walker, or a wheelchair if that is preferred by the Appellant, upon discharge. Ms. Polyak testified that the shelter intake can place the Appellant at a location that is accessible by walker or wheelchair.

The Facility submitted a medical progress note dated [REDACTED] 2025, from its physician, Olusegun Ogunfowora, M.D., in which the physician documents that the Appellant is medically stable and safe for discharge to "home/shelter or other accommodations in community." (Ex. 3.)

The Appellant testified on her own behalf and stated that she has not been walking for a month, that she cannot stand or move, and that she has fallen six times in the past two months. She elaborated that she has been having [REDACTED] and testified that she independently located a [REDACTED] in the community whom she saw three days prior to the hearing. The Appellant testified that the [REDACTED] prescribed a new/different medication for her and that it has started to work. The Appellant testified that she has been looking for a three-bedroom apartment for herself out of state because it is too expensive to live in [REDACTED]. The Appellant also testified that she would need some assistance with tasks such as walking around, changing, and cleaning in order to live independently in an apartment.

The evidence consistently and credibly supports that the Appellant has no skilled nursing needs and is medically stable and functionally able to be discharged to the community. The Facility has met its burden to show that the Appellant's health has improved sufficiently such that discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2). The Facility has also shown that a homeless shelter, while not preferable, is a safe and appropriate discharge location for the Appellant. The Appellant is encouraged to reconsider her declination of placement in an assisted living facility, where she would be afforded access to assistance with the tasks she identified and provide her with additional time to locate an apartment.

DECISION

The Phoenix Rehabilitation and Nursing Center has established that its determination to discharge the Appellant is permissible, and that its discharge plan is appropriate.

1. The Appellant may be discharged in accordance with the Transfer/Discharge Notice dated [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: March 20, 2025

Tina M. Champion
Tina M. Champion
Administrative Law Judge

TO:

[REDACTED]
c/o The Phoenix Rehabilitation and Nursing Center
140 Saint Edwards Street
Brooklyn, New York 11201
[REDACTED]

Tatyana Polyak, Director of Social Work
The Phoenix Rehabilitation and Nursing Center
140 Saint Edwards Street
Brooklyn, New York 11201
tpolyak@thephoenixrehab.com