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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

March 19, 2025

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Northeast Center for Rehab & Brain Injury
300 Grant Avenue
Lake Katrine, New York 12449

Julie Cole, Legal Liason
Northeast Center for Rehab & Brain Injury
300 Grant Avenue
Lake Katrine, New York 12449

[REDACTED]

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

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

[Redacted]

Appellant,

from a determination by

**Northeast Center for Rehabilitation
and Brain Injury,**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION

#DA25-6538

Hearing Before: Natalie J. Bordeaux
Administrative Law Judge

Held via: Webex videoconference

Hearing Date: March 14, 2025
The record closed March 19, 2025

Parties: Northeast Center for Rehabilitation and Brain Injury
300 Grant Avenue
Lake Katrine, New York 12449
By: Julie Cole, Legal Liaison

[Redacted]

Pro se

JURISDICTION

Northeast Center for Rehabilitation and Brain Injury, a residential health care facility subject to Article 28 of the New York Public Health Law and located in Ulster County, New York, determined to discharge ██████████ (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

Facility witnesses:	Julie Cole, Legal Liaison Paula Carberry, Social Worker Zohra Moshref, Nurse Practitioner
Facility exhibits:	1 – Social work notes 2 – Medical progress note dated ██████████, 2025 3 – Discharge notice dated ██████████, 2025 4 – Minimum Data Set (MDS) Nursing Home Quarterly Version, Cognitive Patterns Assessment conducted ██████████, 2025 5 – Medical progress note dated ██████████ 2025
Appellant witnesses:	██████████ Appellant ██████████ (by phone)
Appellant exhibits:	None
ALJ exhibits:	I – Hearing notice and accompanying cover letter II – Physician summary dated ██████████, 2025 III – Discharge planning progress note dated ██████████ 2025

A digital recording of the hearing was made (1:01:40 in duration).

ISSUES

Has Northeast Center for Rehabilitation and Brain Injury established that its determination to discharge the Appellant is authorized and that its discharge plan is appropriate?

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was transferred from [REDACTED] [REDACTED] to Northeast Center for Rehabilitation and Brain Injury (Facility) on [REDACTED], 2023 for rehabilitation after he suffered a [REDACTED]. He has been diagnosed with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Exhibit 2 and ALJ Exhibit II.)
2. The Appellant has completed prescribed occupational and physical therapies and is independently able to perform all activities of daily living (ADLs) and more complex tasks, including managing personal finances and cooking (instrumental activities of daily living or IADLs). (Exhibits 2, 5; Recording @ 16:55.)
3. By notice dated [REDACTED], 2025, the Facility advised the Appellant that he would be discharged on [REDACTED], 2025 because his health has improved sufficiently so that he no longer requires the services provided by the facility. The notice informed the Appellant that he would be discharged to the [REDACTED], New York. (Exhibit 3.)
4. The Appellant's record contains complete documentation made by his physician, Dr. Peyman Younesi, and other members of his interdisciplinary care team, which identifies the Appellant's current health conditions, including conditions which have improved. Dr. Younesi's documentation confirms that the Appellant no longer requires the services of a nursing home and can be safely discharged to the community. (ALJ Exhibit II.)
5. The Appellant remains at the Facility pending the outcome of the hearing.

APPLICABLE LAW

A residential health care facility (also referred to in the regulations as a nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. Public Health Law §§ 2801(2)-(3); 10 NYCRR § 415.2(k).

Transfer and discharge rights of residential health care facility residents have been codified in Public Health Law § 2803-z and are set forth in Department regulations at 10 NYCRR § 415.3(i). The regulation states, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(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.

When the facility transfers or discharges a resident because the resident's health has improved sufficiently that the resident no longer needs the services provided by the facility, the facility shall ensure that the resident's clinical record contains complete documentation made by the resident's physician and, as appropriate, the resident's interdisciplinary care team. 10 NYCRR § 415.3(i)(1)(ii)(a).

The facility must 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). The facility must also permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(i)(1)(vii). The facility shall use its best efforts to secure appropriate placement or a residential arrangement for the resident, other than temporary housing assistance such as a shelter or hotel. PHL § 2803-z(1)(b).

The residential health care facility must prove that the discharge was necessary and the discharge plan appropriate. 10 NYCRR § 415.3(i)(2)(iii)(b).

DISCUSSION

The Facility determined that the Appellant’s discharge is necessary because his health has improved sufficiently so that he no longer needs the services provided by the nursing home. (Exhibit 3.) The Appellant’s clinical record includes complete documentation made by a physician and other members of his interdisciplinary care team regarding the stated ground for discharge, as required by 10 NYCRR § 415.3(i)(1)(ii)(a); *see also* 42 CFR § 483.15(c)(2). (Exhibits 2, 5; ALJ Exhibit II.)

Dr. Peyman Younesi has confirmed in writing that the Appellant’s “condition has improved so significantly that he no longer requires the services of a nursing home.” (Exhibit II.) The Appellant does not receive any services uniquely provided by a nursing home and is completely independent with ADLs and IADLs. (Recording @ 15:10.) While the Appellant does not dispute the stated basis for discharge, he is contesting the proposed discharge plan to the Hampton Inn in New Paltz. (Recording @ 6:37.)

Social workers at the Facility began discussing discharge options with the Appellant in █████ 2023. The Appellant initially expressed a desire to move to █████ to be near █████

his [REDACTED] However, he subsequently changed his mind after realizing that he might not obtain Medicaid benefits in [REDACTED] immediately upon relocating. The Appellant then sought possible discharge outlets in [REDACTED] County located in the same or neighboring town as a storage facility where his personal possessions are stored. (Exhibit 1; Recording @ 17:13.)

The Appellant asked social work staff to contact two assisted living facilities (ALFs) located within his geographic range, but neither ALF believed he would be a suitable candidate for their services because he is too “high functioning” and those ALFs were unable to accommodate the Appellant’s demands, which included a private room. (Exhibit 1; Recording @ 18:05.)

The Appellant also requested readmission to the [REDACTED], the nursing home from which he was transferred to the Facility. However, the [REDACTED] refused to readmit him because he does not require services provided by a nursing home. The Appellant inquired about long-term stays through Airbnb or local hotels in the Facility’s vicinity after repeatedly advising social workers that he would only consider a fully-furnished apartment in specific towns on a month-to-month lease. No available options were acceptable to the Appellant. (Exhibit 1; Recording @ 18:44.)

Social work made one last attempt at procuring a spot for the Appellant at another ALF in [REDACTED] New York ([REDACTED] ALF). Although that ALF did not have an available room for the Appellant, it referred his application to a sister facility, but the Appellant declined to apply for that facility because it is located in [REDACTED] County, outside of his requested geographic range of [REDACTED] County. (Exhibit 1.)

At the hearing, the Appellant confirmed that his desired discharge outlet must be fully furnished and located within a reasonable distance to his storage facility. (Recording @ 25:13.)

He expressed shock at receiving the [REDACTED], 2025 discharge notice and contended that he needed more time to identify an alternative discharge location. (Recording @ 44:20.) Despite confirming that he himself had unsuccessfully searched for a fully-furnished month-to-month rental, either in the form of a rented room or an Airbnb within his desired geographic range, the Appellant was unable to articulate why the proposed discharge location, a hotel within the desired geographic proximity to his storage unit, was not appropriate. (Recording @ 25:13.) Instead, the Appellant asserted that he had not visited the [REDACTED] because the Facility would not allow him to leave the premises. (Recording @ 22:12.) Facility social worker Paula Carberry explained Facility policies regarding day passes for residents and advised him that he would be able to see the [REDACTED] with permission. (Recording @ 1:00:00.)

Both the Appellant and Ms. Christian were skeptical of the Facility's assertions that ALFs within the Appellant's desired geographic range rejected the Appellant's application because no written communication had been disseminated. (Recording @ 27:29, 32:29, 34:56.) However, Ms. Carberry confirmed receiving verbal notification that previously-referred ALFs were unable to accept the Appellant. (Recording @ 28:30.)

Ms. Christian also expressed concern for the Appellant's ability to manage his affairs if discharged to the community. (Recording @ 33:59.) Ms. Carberry confirmed that the Appellant is able to manage his own money and cook his meals. (Recording @ 20:22.) She explained that the Appellant would be discharged with a referral to a physician in the community and offered to procure a care manager and apply for Meals on Wheels on the Appellant's behalf if the Appellant is discharged to the [REDACTED]. (Recording @ 41:46.) Ms. Carberry testified that the Facility had avoided shelter placement for the Appellant, even though the Ulster County

Department of Social Services would immediately house him in a shelter or possibly in a hotel. (Recording @ 21:16.)

At Ms. Christian's insistence, the Appellant stated he would consider [REDACTED] ALF's sister facility in [REDACTED] County. (Recording @ 55:48.) The hearing record was left open until March 19 to enable Ms. Carberry to contact that ALF, along with [REDACTED], to verify the prospect of the Appellant's admission to either facility. (Recording @ 56:41.)

After the hearing, the Facility advised that social workers had contacted five ALFs in [REDACTED] County (the Appellant's preferred location), but no rooms were available for the Appellant. One ALF only considers individuals willing to pay privately for the cost of their stay, and the Appellant does not want to pay out-of-pocket. Two other ALFs had already denied the Appellant's application; no beds were available at another ALF; and the fifth ALF in [REDACTED] County did not return the social worker's message. In neighboring [REDACTED] County (outside of the Appellant's desired range but which he expressed a possible willingness to consider during the hearing), social workers left messages for two ALFs. Three other ALFs in Dutchess County were only admitting private pay customers. (ALJ III.)

The Facility has established that the proposed discharge plan is appropriate. The Appellant's preferences are unreasonable and are not based on medical needs. He has no need for the services provided by a nursing home but insists on staying at the Facility because he wants to live within a short distance of his storage unit. Although the Appellant seeks additional time to procure an alternative living arrangement, he overlooks the fact that he has already been afforded a nearly two-year stay for no medical or therapeutic purpose simply to participate in discharge planning, none of which has materialized into a discharge arrangement that is acceptable to him.

The Facility has made extensive efforts to accommodate the Appellant's wishes for possible discharge locations. Some possible discharge plans are not feasible (the few ALFs the Appellant is willing to consider cannot accept him) and other plans (such as room rentals and Airbnb rentals) never came to fruition because the Appellant changed his mind. The Facility explored the options he requested and attempted to find others to offer him. These efforts were repeatedly and unreasonably rejected. The Facility has met its PHL §2803-z(1)(b) obligation to use its best efforts to secure appropriate placement other than temporary housing assistance. The [REDACTED] is a short Uber or car service ride from the Appellant's storage facility. The rooms are furnished and will afford the Appellant space for his personal belongings. (Recording @ 20:16)

The Appellant is encouraged to continue to explore other living situations if he so desires but cannot do so while remaining at the Facility. The Facility is authorized to discharge the Appellant pursuant to the [REDACTED], 2025 discharge notice.

DECISION

Northeast Center for Rehabilitation and Brain Injury has established that its determination to discharge the Appellant is authorized and that its discharge plan is appropriate.

Dated: March 19, 2025
Menands, New York



Natalie J. Bordeaux
Administrative Law Judge

To:

Julie Cole, Legal Liaison
Northeast Center for Rehabilitation and Brain Injury
300 Grant Avenue
Lake Katrine, New York 12449

[REDACTED]
c/o Northeast Center for Rehabilitation and Brain Injury
300 Grant Avenue
Lake Katrine, New York 12449

[REDACTED]
[REDACTED]
[REDACTED]