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NEW YORK STATE | Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

May 16, 2025

**CERTIFIED MAIL/RETURN RECEIPT**

[redacted]
c/o Hebrew Home at Riverdale
5901 Palisade Avenue
Riverdale, New York 10471

Anne Weisbrod, DSW
Hebrew Home at Riverdale
5901 Palisade Avenue
Riverdale, New York 10471

**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

**Hebrew Home at Riverdale**

Respondent,

to discharge her from a residential
health care facility.

COPY

**DECISION AFTER HEARING**

**#DA25-6575**

Hearing Before: Shelby L. Foster
Administrative Law Judge

Hearing Date: May 7, 2025

Held via: Webex Videoconference

Parties: Hebrew Home at Riverdale
5901 Palisade Avenue
Riverdale, NY 10471
By: Anne Weisbrod, Vice President of Social Services

[redacted]
c/o Hebrew Home at Riverdale
5901 Palisade Avenue
Riverdale, NY 10471
By: pro se

## JURISDICTION

By notice dated [redacted], 2025, Hebrew Home at Riverdale (Facility), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge [redacted] (Appellant) from care and treatment in its facility. The Appellant appealed the determination to the New York State Department of Health (Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) Section 415.3(i).

The hearing was conducted pursuant to 10 NYCRR 415.3(i). Evidence was received and witnesses were examined.

## HEARING RECORD

| | |
|---|---|
| ALJ Exhibits: | I – Notice of Hearing and Notice of Discharge or Transfer |
| Respondent's Witnesses: | Anne Weisbrod, Vice President of Social Services<br>Mojdeh Rutigliano, Vice President of Nursing<br>Zachary Palace, MD, Physician and Medical Director |
| Respondent's Exhibits: | A – Discharge Notice Given on [redacted]-25<br>B – Proof that Ombudsman Received Discharge Notice<br>C – Face Sheet and Medical Notes<br>D – Social Work Notes<br>E – MDS Section GG<br>F – BIMS Score<br>G – Out on Pass Logs |
| Appellant's Witnesses: | [redacted] Appellant |
| Appellant's Exhibits: | 1 – Letter from Dr. [redacted] Dated [redacted]-25<br>2 – Email from [redacted] 4:44 PM<br>3 – Referrals and Reports from Appellant<br>4 – Verification for Housing Application Dated [redacted]-25<br>5 – Lease – [redacted] – [redacted]<br>6 – Letter from Home Base Dated [redacted]-25<br>7 – [redacted] Voucher Dated [redacted]-24 |

A digital recording of the hearing was made. (1:15:45 in duration.)

## ISSUES

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

## FINDINGS OF FACT

1. The Appellant is a [redacted]-year-old female who was admitted to the Facility on [redacted] 2020, for short-term rehabilitation after being hospitalized for [redacted] (Exhibit [Ex.] C; Testimony [T.] Palace.)

2. The Appellant completed a course of short-term rehabilitation and transitioned to long-term care in [redacted] 2020. During her stay as a long-term care resident at the Facility, the Appellant has been treated for pain complaints and pain management. (T. Palace, Weisbrod.)

3. In [redacted] 2024, the Appellant fell and sustained a [redacted] at the Facility. She underwent a surgical procedure to repair the [redacted]. When the Appellant returned to the Facility, she went through a course of skilled rehabilitation, physical therapy, and occupational therapy as the [redacted] healed. The Appellant has been followed by "[redacted] [on an outpatient basis] since her surgery. (T. Palace.)

4. The Appellant is not currently receiving physical therapy or occupational therapy at the Facility. (T. Palace.)

5. The Appellant is independent in her activities of daily living (ADLs) and can ambulate more than [redacted] feet with a rollator. (Exs. C, E, F; T. Rutigliano.)

6. The Appellant's clinical record includes documentation made by a physician that she is no longer in need of the services of a nursing home, and is appropriate for discharge to the community, including shelter. (Exs. B, C; T. Palace, Rutigliano, Weisbrod.)

7. Facility social workers have been working with the Appellant to establish a discharge location since [redacted] 2020. These efforts were initiated at the Appellant's request, as she expressed a clear desire to leave, and she often made those efforts with little assistance from staff at the Facility. (Ex. D; T. Weisbrod.)

8. On [redacted] 2025, the Appellant electronically signed a lease for an apartment located in [redacted] County, New York. (Ex. 5.)

9. By notice dated [redacted] 2025, the Facility advised the Appellant of its determination to discharge her on [redacted], 2025, as it was "[n]ecessary because your health has improved sufficiently so that you no longer need the services provided by the facility (e.g. you have completed your short stay/rehab program)." (ALJ Ex. I.)

10. The discharge notice advised the Appellant that she would be discharged to [redacted], New York [redacted] (ALJ Ex. I.)

11. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.

12. The Appellant remains at the Facility pending the outcome of this hearing.

## APPLICABLE LAW

A residential health care facility, or nursing home, is a residential facility 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. PHL §§ 2801(2), (3); 10 NYCRR 415.2(k).

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR 415.3(i), which provides, 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). Further, the facility shall use its best efforts to secure appropriate placement or a residential arrangement for the resident, other than temporary housing. PHL § 2803-z(1)(b).

The Respondent has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

## DISCUSSION

Grounds for Discharge

The Facility has determined that the Appellant's health has improved sufficiently so that she no longer needs the services provided there. The Appellant is independent in all activities of daily living and is not receiving any physical or occupational therapy at the Facility.

Zachary Palace, MD, the Facility's Medical Director, testified that the Appellant no longer qualifies for or needs the services of a nursing home. Mojdeh Rutigliano, the Facility's Vice President of Nursing, testified that the Appellant "does pretty much anything she desires independently," and that she does not want nursing staff to check on her. The Appellant goes in and out of the facility at her leisure, making transportation arrangements by herself, documented by the Out on Pass Logs. (Ex. G.)

When asked why she disputes the Facility's contention that she no longer requires the services of the facility, the Appellant testified that she still has falls, she can't [redacted], her [redacted] have to be [redacted] because of [redacted] and [redacted], and she sometimes needs help [redacted]. She testified that she is currently receiving services that include [redacted]

([redacted]); "that's basically it." The Appellant acknowledged that she has mostly good days but does have bad days.

Dr. [redacted], an outpatient provider, saw the Appellant on [redacted] 2025, and noted that she has ongoing functional impairments and continues to require skilled physical therapy sessions to improve mobility, balance, and overall safety. (Ex. 1.) While Dr. [redacted] recommends continuing physical therapy, that does not amount to a recommendation or requirement that the Appellant remain in a residential health care facility to obtain that therapy. The therapy that the Appellant has been recommended can be obtained on an outpatient basis.

The Facility has established, and documented in the clinical record, that the Appellant's health has improved sufficiently that she no longer requires the services provided by the Facility.

Discharge Plan

The Facility has determined to discharge the Appellant to [redacted] Shelter. (Ex. ALJ I.) The record establishes that the Facility has used its best efforts to secure appropriate placement, including a residential arrangement for the Appellant, as required by PHL § 2803-z(1)(b). Anne Weisbrod, the Facility's Vice President of Social Services, testified that the Appellant has "been very much a part of all discharge planning processes that have been going over the past five years." She highlighted a number of the efforts detailed in the Social Work Notes (Ex. D.), which demonstrate a long history of Ms. [redacted] participation in the process, but also a history of being overly particular and failing to follow through. Examples include:

- [redacted] 2020, the Appellant told the Facility that she was working to get back to her building, an apartment on the ground floor, and applying to different lotteries and housing opportunities within the area.
- [redacted] 2022, the Appellant told the Facility she found an apartment through [redacted] that is in her budget and she is eligible for.
- [redacted] 2022, the Appellant told the Facility that a one bedroom handicap accessible apartment was found for her in [redacted] After seeing the apartment, she advised that she was turning it down because it was not in her desired neighborhood.
- [redacted] 2024, the Facility applied to [redacted] on behalf of the Appellant, but she indicated she was not going to consider it because there were no private rooms, only shared rooms, and she is only interested in something that has her own space.
- [redacted] 2025, the Facility applied to [redacted] on behalf of the Appellant, which she turned down because it had shared rooms.

The Appellant testified that she doesn't plan on moving again and wanted to take her time finding a one bedroom residence. She received a [redacted]) housing voucher in [redacted] (Ex. 7.) and thought she would have until after the holidays to start looking for an apartment. The Appellant started looking at apartments in [redacted] 2024, and on [redacted] 2025, she electronically signed a lease for an apartment in [redacted] County. (Ex. 5.) The Appellant testified that the letter from [redacted], dated [redacted] 2025 (Ex. 6.), states that her voucher transfer from [redacted] to [redacted] County has been approved. The Appellant submitted a screenshot of a partial email indicating a possible move in date of [redacted]. (Ex. 2.)

While the Appellant contends that she has an apartment, the Facility has established, and documented, a history of similar contentions that failed to come to fruition. Further, the Appellant's primary concern about being discharged to a shelter was related to her

belongings and what she was going to do with them. She mentioned safety briefly before she continued discussing her belongings and storage concerns. The Appellant is not entitled to remain in a nursing home when she no longer requires its services while she searches for an apartment that meets her personal long-term expectations.

The Appellant acknowledged that she is "pretty much independent," but doesn't understand how being placed in a shelter will help her because she "cannot [redacted] the way that other people can." Dr. Palace testified that being discharged to a shelter would not help the Appellant, but it would not be to her detriment; she is able to [redacted] and is able to ambulate up to a [redacted] using a rolling walker.

The Facility has established that the shelter is an appropriate discharge location for the Appellant.

## DECISION

The Hebrew Home at Riverdale has established that the discharge of the Appellant is necessary and that the discharge plan is appropriate.

1. The Hebrew Home at Riverdale is authorized to discharge the Appellant pursuant to the Notice of Discharge 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: Menands, New York

May 16, 2025

Shelby L. Foster
Administrative Law Judge

To: Anne Weisbrod, Vice President of Social Services
Hebrew Home at Riverdale
5901 Palisade Avenue
Riverdale, NY 10471
Anne.Weisbrod@riverspring.org

[redacted]
c/o Hebrew Home at Riverdale
5901 Palisade Avenue
Riverdale, NY 10471
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