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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

April 29, 2025

CERTIFIED MAIL/RETURN RECEIPT

Suzanne Hogan, Administrator
Bellhaven Center for Rehabilitation
110 Beaver Dam Road
Brookhaven, New York 11719

[REDACTED] HCP and POA
[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
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

**Bellhaven Center for Rehabilitation
and Nursing Care,**

Respondent,

to discharge him from a residential
health care facility.

COPY

**DECISION
AFTER
HEARING**

#DA25-6577

Hearing Before: John Harris Terepka
Administrative Law Judge

Held at: New York State Department of Health
by videoconference
April 29, 2025

Parties: Bellhaven Center for Rehabilitation and Nursing Care
110 Beaver Dam Road
Brookhaven, New York 11719
shogan@bellhavencenter.com
By: Suzanne Hogan, administrator

By: [REDACTED] /designated representative

JURISDICTION

Bellhaven Center for Rehabilitation and Nursing Care (the Respondent), a residential health care facility subject to Article 28 of the Public Health Law, discharged [REDACTED] (the Appellant) from care and treatment in its nursing home. The Appellant appealed the discharge determination to the New York State Department of Health pursuant to 10 NYCRR 415.3.

HEARING RECORD

Respondent witnesses: Robert Stone NP
Heather McClee, RN supervisor
Lendcy Evans, social worker
Respondent exhibits: 1-4
Appellant witnesses: [REDACTED]
Appellant exhibits: None
ALJ exhibit: ALJ I (hearing notice)
The hearing was held and recorded by Webex videoconference. (1h2m.)

SUMMARY OF FACTS

1. The Respondent is a residential health care facility (RHCF) located in Brookhaven, New York.
2. Appellant [REDACTED] age [REDACTED] was admitted to the facility on [REDACTED] 2025 after hospitalization. (Exhibit 1.) His [REDACTED] [REDACTED] is his health care proxy and power of attorney. (Exhibit 2.)
3. On [REDACTED] 2025, [REDACTED] appeared at the Respondent's facility and requested a pass to take the Appellant for an overnight visit. The nurse practitioner on duty declined to give medical clearance for the overnight pass. When the Appellant and Mr. [REDACTED] insisted on going out anyway, the Respondent's RN supervisor had them sign a facility form stating:

Release of Responsibility for Discharge Against Medical Advice:

DATE: ██████████/25

TO: ██████████/25

This is to certify that I, ██████████ hereby assume full responsibility for being discharged against the advice of the attending physician and the nursing home Administration. I acknowledge that I have been informed of the risk involved and hereby release the attending physician and the facility from all responsibility for all ill effect which may result from this action.

(Exhibits 3, 4.)

4. No discharge notice was provided to the Appellant and his possessions remained at the Respondent's facility on ██████████. When he attempted to return to the nursing home on ██████████ the Appellant was refused admission. (Exhibit 4.)

ISSUES

Has the Respondent established that the Appellant's discharge is authorized and that the discharge plan is appropriate?

APPLICABLE LAW

A residential health care facility (RHCF), 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; 10 NYCRR 415.2(k). Transfer and discharge rights of nursing home residents have been codified in Public Health Law 2803-z and set forth in Department regulations at 10 NYCRR 415.3(i) and federal regulations at 42 CFR 483.15(c).

When a facility transfers or discharges a resident, the facility shall notify the resident and designated representative of the transfer or discharge and the reasons for the move in writing. 10 NYCRR 415.3(i)(iii). Transfer and discharge does not include

transfer or discharge made in compliance with a request by the resident, the resident's legal representative or health care agent, as evidenced by a signed and dated written statement. 10 NYCRR 415.3(i).

Regarding an alleged resident request for transfer or discharge:

A residential health care facility shall not compel or attempt to compel an individual to voluntarily transfer or discharge from the facility. In the event the resident seeks a voluntary transfer or discharge, the facility shall document, as part of the resident's medical records, the reason the resident is seeking a transfer or discharge. If the resident declines to provide a reason, the facility shall document that in the resident's medical record. PHL 2803-z(3).

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

DISCUSSION

The Respondent does not dispute that the Appellant is in need of nursing home care. Its own position is that he left the Respondent's facility against medical advice when he needed the care it provides. At issue is the Respondent's contention that the discharge was voluntary, made in compliance with a request by the Appellant as "evidenced by a signed and dated written statement." 10 NYCRR 415.3(i). The Respondent claims that because the Appellant and his representative chose to leave on [REDACTED] against medical advice, he was voluntarily discharged and is not entitled to a hearing to challenge the Respondent's refusal to readmit him when he returned on [REDACTED]. The evidence clearly shows otherwise.

The "Release of Responsibility for Discharge Against Medical Advice" relied on by the Respondent was signed on [REDACTED] at the time the Appellant left, but also bears the notation "To: [REDACTED]/25." The signed and dated written statement on which the

Respondent relies, then, documents that at the time the release was signed the Appellant intended to return the next day. The use of the term "discharge" on the printed release form is not consistent with the actual, contemporaneously recorded information on the form. To the extent there is any ambiguity it is resolved in favor of the contemporaneously made notations and the Respondent's own account of what happened, not the word "Discharge" on a preprinted form.

All the other evidence is entirely consistent with the conclusion that the Appellant did not request discharge and only intended to leave for one night. The Respondent did not document any reason why the Appellant might have been requesting a voluntary discharge from the facility, as is required by PHL 2803-z(3). The Respondent's administrator's own summary of the events of [REDACTED] states, to the contrary: "[REDACTED] appeared at the nursing station on his [REDACTED] unit and requested a pass for an overnight visit" and notes that the Appellant's belongings were left at the facility. (Exhibit 4.) Nursing supervisor Heather McClee testified that she explained "the potential for him to lose his bed if he does not return" (0h21m) and told him "If you are going to take him against medical advice, you really should return him as soon as possible." (0h22m.) Mr. [REDACTED] the Appellant's [REDACTED] and representative who signed the release, confirmed at the hearing that it was always his intention to return the Appellant to the Respondent, and none of other evidence, or the Respondent's documentation, calls that intention into question. The Appellant did not voluntarily request discharge, and the Respondent was not entitled to compel or unilaterally deem him to have done so.

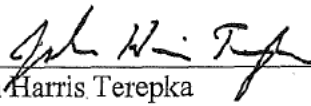
A resident's failure to follow a nursing home's medical advice is not an authorized grounds for discharge under state law or federal or state regulations. If the Respondent intends to discharge this resident, it is required to issue a proper written notice of discharge stating permissible grounds and an appropriate discharge plan, or to secure a clear, unambiguous and properly documented voluntary discharge.

DECISION: Respondent Bellhaven Center has not established appropriate notice and valid grounds for discharge.

The Respondent is not authorized to discharge the Appellant and is directed to readmit him immediately.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York
April 29, 2025


John Harris Terepka
Administrative Law Judge
Bureau of Adjudication