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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

May 15, 2025

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Northern Manhattan Rehabilitation
and Nursing Center
116 East 125th Street
New York, New York 10035

Maxine McCarthy, DSW
Northern Manhattan Rehabilitation
and Nursing Center
116 East 125th Street
New York, New York 10035

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
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

COPY

DECISION

██████████,
Appellant,

from a determination by

Northern Manhattan Rehabilitation and Nursing Center

to discharge them from a residential health care facility.

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

Held at : Videoconference via Webex

Dates : May 14, 2025

Parties : ██████████
C/o Northern Manhattan Rehabilitation and Nursing Center
116 East 125th Street
New York, New York 10035

Maxine McCarthy, DSW
Northern Manhattan Rehabilitation and Nursing Center
116 East 125th Street
New York, New York 10035
mmccarthy@nmrehab.org

On [REDACTED], 2025, Northern Manhattan Rehabilitation and Nursing Center, (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), issued a Discharge Notice stating it determined to discharge resident [REDACTED] (Appellant) from the Facility. The stated basis for the discharge is that the Appellant's health has improved and he no longer needs the services provided by the Facility. The proposed discharge is to [REDACTED], New York. 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).

A Webex hearing was scheduled at 10:00am on May 14, 2025. The Appellant was provided with notice and he abandoned the appeal hearing that he requested. The Facility appeared and a record was made of the Appellant's abandonment of the hearing and why the discharge is necessary and the discharge to [REDACTED] is appropriate. The ALJ admitted three exhibits: ALJ Exhibit 1 – *Facility Emails with Attachments Including Calendar of Appellant's 2025 Medical Appointments & Appellant's [REDACTED], 2025 Adjournment Request*; ALJ Exhibit 2 – *Notice of Hearing with Discharge Notice*; ALJ Exhibit 3 – *Physician Progress Notes and [REDACTED] Acceptance of the Appellant*. Maxine McCarthy, DSW, and Sophia David, DON provided testimony. A digital recording was made of the proceeding.

The Appellant was given notice of the Webex hearing scheduled at 10:00am on May 14, 2025. ALJ Exhibit 2. On May 13, 2025, late in the afternoon, the Appellant faxed a handwritten adjournment request to the ALJ's office stating "*Adjourned because tomorrow 5-14-25 I have a DR. Appointment. Thanks [REDACTED]*." ALJ Exhibit 1. The Facility sent an email to the ALJ's office and attached the calendar of Appellant's [REDACTED] 2025 medical appointments, which shows that

he does not have a medical appointment in the community on May 14, 2025. ALJ Exhibit 1. At approximately 9:15am on May 14, 2025 the Appellant called the ALJ's office requesting an adjournment. He was instructed to appear at the hearing and make his request on the record. The Appellant was present in the Facility at the time of the hearing. A computer was brought to the Appellant to allow him to participate in the hearing from his room, but he refused to participate. The ALJ asked the Facility to advise the Appellant that she would like him to appear and participate in the hearing but again he refused. The Facility encountered some technical difficulties and the start of the hearing was delayed. Once again the Appellant was invited to participate in the hearing and once again he refused.

Ms. McCarthy testified that the Appellant was provided with the Notice of Hearing and given multiple reminders about the upcoming hearing. The Appellant did not have a medical appointment in the community on May 14, 2025. ALJ Ex. 1. The Appellant was present in the Facility at the time of the hearing and despite repeated invitations he refused to participate. ALJ Ex. 1, ALJ Ex. 2. Applications were sent to a number of assisted living facilities, only [REDACTED] [REDACTED] accepted the Appellant. ALJ Ex. 3.

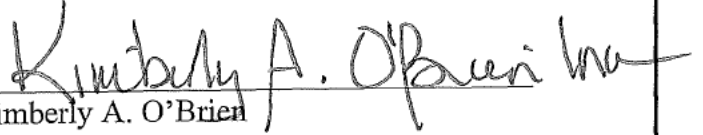
Ms. David testified that the Appellant is independent with decision making and his activities of daily living, and he ambulates without an assistive device. The Appellant is medically stable and does not need the services the Facility provides and discharge to an assisted living facility is appropriate. ALJ Ex. 3.

DECISION

The Appellant has ABANDONED his appeal, and the Facility has established that the discharge/transfer is necessary and the discharge location is appropriate.

1. The Facility is authorized to discharge the Appellant pursuant to the 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
May 14, 2025


Kimberly A. O'Brien
Administrative Law Judge