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# Department of Health

KATHY HOCHUL  
Governor

JAMES V. McDONALD, MD, MPH  
Commissioner

JOHANNE E. MORNE, MS  
Executive Deputy Commissioner

June 27, 2025

**CERTIFIED MAIL/RETURN RECEIPT**

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Legal Services of Long Island  
1757 Veterans Memorial Highway, Suite 50  
Islandia, NY 11749

[REDACTED]  
c/o Fulton Commons Care Center  
60 Merrick Ave.  
East Meadow, NY 11554

**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: nm  
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

**Fulton Commons Care Center**  
Respondent,

to discharge her from a residential  
health care facility.

COPY

DECISION  
AFTER  
HEARING

#DA25-6591

Hearing before: Shelby L. Foster  
Administrative Law Judge

Held via: Webex Videoconference

Hearing Date: June 9, 2025

Record Closed: June 11, 2025

Parties: Fulton Commons Care Center  
60 Merrick Ave.  
East Meadow, NY 11554  
By: Barbara Stegun Phair  
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60 Merrick Ave.  
East Meadow, NY 11554  
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### JURISDICTION

By notice dated ██████████ 2025, Fulton Commons Care Center (Respondent), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge ██████████ (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) § 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<br>II – Post Hearing Social Work Notes |
| Respondent's Witnesses: | Jeannot Jourdain, Director of Social Work<br>Kiawna Ferguson, Social Worker                      |
| Respondent's Exhibits:  | 1 – Prior Decision Dated ██████████ 2025<br>2 – Supplemental Social Work Notes                   |
| Appellant's Witnesses:  | ██████████ Appellant                                                                             |
| Appellant's Exhibits:   | A – Social Work Notes                                                                            |

A digital recording of the hearing was made. (1:11:10 in duration.)

### ISSUES

Has the Respondent 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 █████-year-old female who was admitted to the Respondent facility on █████ 2024. (Exhibit [Ex.] 2.)
2. By notice dated █████, 2025, the Respondent advised the Appellant of its determination to discharge her on █████, 2025, on the grounds that the resident's health has improved sufficiently so that the resident no longer needs the services of the facility. (ALJ Exhibit I.)
3. The Appellant does not dispute the Respondent's grounds for discharge. She disputes the discharge location. (T. █████)
4. The discharge notice advised the Appellant that she would be discharged to █████), located at █████, NY █████ (ALJ Exhibit I.)
5. The Appellant timely appealed the Respondent's discharge determination and proposed discharge location.
6. The Appellant remains at the Respondent 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).

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

The Respondent 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. The Appellant does not dispute the Respondent's determination as it relates to the grounds for discharge, but does dispute the proposed discharge location.

The Appellant received a prior discharge notice from the Respondent on [REDACTED], 2025, with a proposed discharge to [REDACTED], as that was the only facility that had accepted the Appellant at that time. The Appellant appealed the discharge determination, and a hearing was held on April 8, 2025. The ALJ found that the discharge was necessary, and the discharge plan was appropriate. (Ex. 1.) The Appellant advised that she did not want to go to [REDACTED] and [REDACTED] rescinded her acceptance.

The Respondent has now determined to discharge the Appellant to [REDACTED], NY. (ALJ Exhibit I.) Jeannot Jourdain, the Respondent's Director of Social Work, and Social Worker Kiawna Ferguson both testified that the Appellant's age and lack of income limit her discharge options. The Respondent has submitted referrals to several assisted living facilities (ALFs) (Ex. A.), but only three have accepted the Appellant: [REDACTED]

in ██████████, NY; The ██████████ in ██████████, NY; and ██████████ in ██████████, NY. Referrals to ██████████ and the ██████████ were denied because of the Appellant's lack of income, and a referral to ██████████ was denied because the Appellant did not meet the age requirement of ██████████ years or older. During the hearing, the Respondent researched additional ALFs at the request of Appellant's counsel: ██████████ and ██████████ only to find that they also require income. (Ex. II.)

After ██████████ rescinded its acceptance, the Respondent referred the Appellant to ██████████ where she was accepted pending bed availability. The Appellant testified that she has heard negative things about ██████████ and she does not want to go there. She went on to say that she has come to terms with placement at ██████████ and would like to go there, if they will accept her again. The record was left open to allow the Respondent to contact ██████████ Ms. Ferguson was informed that the Appellant is too independent for their facility, and ██████████ is not able to accept her. While the record was left open, the Respondent contacted a number of additional ALFs, with no positive results. (Ex. II.)

The Respondent had also submitted documentation to ██████████, at ██████████ request. The Appellant had contacted them to express an interest in residing there, even though ██████████ is located in ██████████. While she asked them not to tell the Respondent, ██████████ needed information from the Respondent in order to entertain her request. (Ex. A.) The Appellant was accepted, but she later contacted them and told them that she was no longer interested.



The Appellant has expressed concerns about location because of the proximity to her doctors. Mr. Jourdain testified that the Appellant hasn't expressed these concerns to him; however, ALFs have providers in place, and they can assist her in securing providers in the nearby community. Ms. Ferguson testified that the Respondent would help the Appellant find providers near her new residence prior to being discharged.

The Appellant has an application pending for Social Security disability benefits, which, if awarded, could provide additional discharge options for her. The application process is lengthy, and the Appellant is not entitled to remain in a nursing home when she does not need nursing home care while she awaits a determination. The Appellant may continue pursuing her disability benefits while at [REDACTED] and should they be awarded, she may then apply for transfer to a facility that is more to her liking.

The Respondent has established that [REDACTED] is an appropriate discharge location for the Appellant.

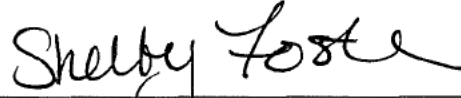
### DECISION

Fulton Commons Care Center has established that the Appellant's discharge plan is appropriate.

1. Fulton Commons Care Center 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

June 27, 2025



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Shelby L. Foster  
Administrative Law Judge

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