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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

June 30, 2025

CERTIFIED MAIL/RETURN RECEIPT

[redacted]
c/o St. James Rehabilitation
and Healthcare Center
275 Moriches Road
St. James, New York 11780

[redacted]

Louis Pugliese, Director of Business Office
St. James Rehabilitation
and Healthcare Center
275 Moriches Road
St. James, New York 11780

[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: 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

St. James Rehabilitation & Healthcare Center

Respondent,

to discharge her from a residential health care facility.

DECISION

Hearing before: Kendra Vergason
Administrative Law Judge

Hearing date: May 23, 2025
Via WebEx videoconference
Record closed: June 2, 2025

Parties: St. James Rehabilitation & Healthcare Center
275 Moriches Rd.
St. James, New York 11780
By: Louis Pugliese, Director of Business Office
lpugliese@stjamesrehab.com

[redacted]
c/o St. James Rehabilitation & Healthcare Center
By: [redacted], Appellant's [redacted]
[redacted]

JURISDICTION

By notice dated [redacted], 2025, St. James Rehabilitation & Healthcare Center (Respondent or Facility), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge [redacted] (Appellant) on [redacted], 2025, from its facility. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

HEARING RECORD

ALJ Exhibits:

I – Notice of Hearing and Notice of Discharge or Transfer
II – Admission Record Resident Face Sheet
III – BIMS score worksheet dated [redacted]/2025
IV – BIMS score worksheet dated[redacted]/2025

Respondent Exhibits:

A – Letter by Richard Gold, MD dated [redacted]/2025
B – Letter by Nicole Michel, RN dated [redacted]/2025
C – Letter by Leslie LaRocca, PT dated [redacted]2025 and PT discharge summary
D – Letter by Matina Panagos, MSW dated [redacted]/2025 and progress note
E – Letter by Cristen Wei, LMSW, LNHA, Administrator dated [redacted]/2025
F – Letter by Evonne Wallace, RN, MSN, [redacted]/2025, and emails to [redacted]
G – Video of Appellant ambulating with walker on unit
H – Care Plan Report
I – Hospital and Community Patient Review Instrument (HC-PRI) dated [redacted]/2025
J – Resident Assessment Outcome Summary Report

Respondent Witnesses:

Matina Panagos, Director of Social Work
Evonne Wallace, Director of Case Management
Brian Sininsky, Nursing Supervisor
Leslie LaRocca, Director of Rehabilitation

Appellant exhibits:

1 – Letter by Richard Gold, MD dated [redacted]/2025

Appellant witnesses:

[redacted], Appellant's [redacted]

[redacted] from the [redacted] County Ombudsman Program was also present in support of the Appellant. A digital recording of the hearing was made. (2h. 30m.)

SUMMARY OF FACTS

1. The Appellant is an [redacted]-year old female who was initially admitted to the Respondent's facility as a long-term care resident on [redacted] 2024, for [redacted]. (Exhibits ALJ II, A, B, H.)

2. The Appellant suffers from [redacted]. She is diagnosed with [redacted]. (Exhibits ALJ II, A, B, H.)

3. The Appellant's [redacted] is characterized as '[redacted] or '[redacted] meaning her [redacted] can [redacted]. (Exhibit B; T. Fazio.) The Appellant's [redacted] is checked [redacted] times a day by the nursing staff – [redacted] – and she requires daily administration of [redacted] (T. Sininsky.)

4. Since her initial admission in [redacted] 2024, the Appellant has been hospitalized twice due to her medical conditions: from [redacted] 2024, to [redacted] 2024, for [redacted]; and most recently from [redacted], 2025, to [redacted] 2025, for [redacted] (Exhibits ALJ II, B; Testimony [T.] LaRocca, Sininsky.)

5. The Appellant has fallen [redacted] times since [redacted] 2024. [redacted] of the falls resulted in injury to the Appellant, and [redacted] of the falls occurred after her readmission to the Facility on [redacted] 2025. The most recent fall occurred the morning of this hearing on [redacted] 2025. (Exhibit H.)

6. A Brief Interview for Mental Status (BIMS) was completed with the Appellant on [redacted] 2025, resulting in a score of [redacted] out of 15, which indicates [redacted] cognitive impairment. (Exhibits D, F.)

7. The Appellant requires [redacted] supervision or [redacted] assistance with transfers, mobility/ambulation, toileting, and lower body dressing. (Exhibits C, H, I.)

8. The Appellant requires assistance with medication administration. She is prescribed [redacted] different medications: [redacted] are taken daily, [redacted] are taken twice daily, she needs [redacted] before each

[redacted] and she takes [redacted] medication weekly. (Exhibits A, H.) She requires nurse monitoring for potential adverse drug reactions. (Exhibit H.)

9. The Appellant exhibits exit-seeking behaviors and is at risk for elopement. (Exhibit H; T. Wallace, Panagos, [redacted]

10. By notice dated [redacted] 2025, the Respondent advised the Appellant of its determination to discharge her on [redacted], 2025, because her health has improved sufficiently such that she no longer needs the services provided by the facility. as evidenced by "this patient's needs can be met in an Assisted Living Facility." (Exhibit ALJ I.)

11. The proposed discharge location is [redacted]) in [redacted] New York, which features a [redacted] and provides Medicaid covered assisted living program (ALP) services. (Exhibits ALJ I, F, H; T. Wallace, Panagos.)

12. The Appellant remains at the Respondent's facility pending the outcome of this hearing.

ISSUES

Has the Respondent established that discharge of the Appellant is necessary and 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(1); 10 NYCRR 415.2(k). Transfer and discharge rights of nursing home residents have been codified in PHL § 2803-z and set forth at 10 NYCRR 415.3(i) and federal regulations at 42 C.F.R. § 483.15. 10 NYCRR 415.3(i) provides, in pertinent part, that the facility shall:

> (1) (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.

To demonstrate that discharge is permissible under this provision, the necessity of the discharge must be documented in the resident's medical record by the resident's physician. 10 NYCRR 415.3(i)(l)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(A).

When the facility determines that discharge is necessary for the resident's welfare due to its inability to meet the resident's needs, the resident's physician must document the specific needs that cannot be met, the facility's efforts to address those needs, and the services available at the receiving facility that can fulfill those needs. PHL §2803-z(d); 42 CFR 483.15(c)(2)(i)(A), (B). Before transferring or discharging a resident, the facility must notify the resident and the designated representative in writing of the reason for the discharge, the specific regulations that support the action, the effective date of the transfer, and the location to which the resident will be discharged. 10 NYCRR 415.3(i)(1)(v); 42 CFR 483.15(c)(3),(5). Except when discharge is necessary because the resident cannot be safely cared for or poses a danger to others in the facility, written notice must be provided at least thirty days before the resident is discharged. PHL § 2803-z(e).

Medicaid coverage for assisted living is only available through the Assisted Living Program (ALP). Admission standards for the ALP differ from those of other assisted living facilities not covered by Medicaid. An ALP may only admit an individual who: (1) is medically eligible for placement in a residential healthcare facility; (2) requires more care and services than can be provided directly by an adult care facility; (3) exhibits a stable medical condition; (4) is able, with direction to take action for self-preservation in an emergency; and (5) voluntarily chooses to participate in an assisted living program. 18 NYCRR 494.4(d).

A patient is eligible for residential health care facility level of care when such care is consistent with the applicable requirements on the patient screening instrument (SCREEN). 10 NYCRR 400.12(a)(1). Patients who are assessed and classified into one of the Resource Utilization Group (RUG) categories meet the criteria for skilled nursing facility level of care. 10 NYCRR 400.11(a)(2).

At a hearing to contest a facility-initiated discharge, it is the facility's burden to prove that the discharge is necessary and that the plan is appropriate. 10 NYCRR § 415.3(i)(2)(ii).

DISCUSSION

On [redacted], 2024, the Appellant, an [redacted]-year-old woman, was admitted for long-term care to the Respondent's facility for [redacted] (Exhibits ALJ II, A, C, F, H, 1.) The Appellant's admission was for long-term care placement due to [redacted] that required ongoing skilled monitoring, assessment, oversight, and medication management. (Exhibits A, H.) At the time she was admitted, she was able to ambulate, transfer and perform toileting tasks with "[redacted] or [redacted] assistance", and was independent in bed mobility. (Exhibit C.) She was also identified as at-risk for elopement due to exit-seeking behavior and has a Wander Alert device. (Exhibit H; T. Wallace.)

On [redacted], 2025, the Respondent gave written notice to the Appellant that she would be discharged on [redacted] to [redacted] in [redacted], New York, because her "health has improved sufficiently so that she no longer needs the services provided by the facility." (Exhibit ALJ I.) To justify the involuntary discharge of the Appellant from its facility, the Respondent must show complete documentation in the Appellant's medical record by her physician that supports the basis for discharge.

The Respondent submitted a physician's progress note and a brief written statement from the Appellant's treating physician, both dated [redacted], 2025. In the written statement, which was prepared for the purposes of this hearing, the physician asserts that the Appellant "does not

require skilled nursing home care." However, the medical record documentation, including the physician's progress note, does not support this conclusion.

The physician's progress note documents the clinical assessment of the Appellant's health status and the plan to address her medical needs. The note states, the Appellant is "[a]waiting placement to an ALF and is medically appropriate at this time[.] She will require medication assistance." The Appellant is described as having "[redacted]," and "also had [redacted] on [redacted]..complicated by [redacted]," but "overall condition has improved." The note documents the Appellant's [redacted] "has [redacted]," requiring her medication to be [redacted] The assessment of her [redacted] notes her [redacted] meaning [redacted] The physician indicates he "[w]ill monitor [redacted] and observe for further [redacted] while she continues "[redacted]." (Exhibit A.)

The documentation by the Appellant's physician does not support the reason for the Appellant's discharge cited in the notice. It does not indicate any significant change or improvement to the Appellant's health since her admission. It does, on the other hand, indicate that she continues to require skilled oversight and monitoring of her medical conditions, which the facility provides.

Other evidence from the Appellant's medical record also fails to support the basis for her discharge. The Appellant's care plan, developed when she was admitted in [redacted] 2024, identifies the Appellant's medical, nursing, and psychosocial needs and includes the interventions that the Respondent has determined are necessary to meet those needs. According to the care plan, the Appellant requires daily skilled nursing intervention for [redacted] times a day and [redacted] administration at bedtime due to the "[redacted]" nature of her [redacted] (Exhibits H, A; T. [redacted] Wallace, Sininsky.) The Appellant's [redacted] status requires daily nursing intervention to "assess for [redacted] and [redacted] every shift." (Exhibit H.) The

[1] [redacted]

Appellant also requires ongoing skilled nursing to perform "neuro-checks [every] 72 hours" due to her significant history of [redacted] (Exhibit H.)

The care plan was updated on [redacted] 2025, to address changes in the Appellant's behavior described as "resistive to care r/t [redacted] ([redacted])" and "is/has potential to demonstrate [redacted]." (Exhibit H, pp. 28-29.) The care plan was updated again on [redacted], 2025, to address two newly identified medical concerns: the Appellant was diagnosed with [redacted]) requiring "[redacted]," and changes in the Appellant's [redacted] related to [redacted] requiring nursing interventions. (Exhibit H, pp. 27, 30, 31.)

The medical record documentation does not support the reason cited by the Respondent for discharging the Appellant. There is no evidence that the Appellant's health has improved since she was admitted for long-term care, let alone to the point that she no longer needs the services provided by the facility. To the contrary, the clinical documentation demonstrates that the Appellant continues to require skilled oversight, monitoring, and interventions for her [redacted] health conditions. Moreover, the Respondent's argument that the Appellant no longer needs nursing home services while seeking discharge to [redacted] assisted living program is contradictory on its face. Under 18 NYCRR 494.4(c), [redacted] assisted living program can only admit the Appellant if she is medically eligible for and requires the services of a nursing home. For these reasons, the Respondent failed to meet its burden to show that discharge of the Appellant, as stated in the [redacted], 2025 discharge notice, is necessary.

The Respondent selected [redacted] as the discharge location because it accepts Medicaid and has a [redacted]. (Exhibit F, T. Wallace.) Admission to an ALP must be voluntary, and the individual must be medically eligible for and require nursing home services. 10 NYCRR 494.4(d)(1). Although similar to a nursing home, ALPs provide less medical and nursing oversight for their residents. (T. Wallace, [redacted], the Appellant's [redacted]

and representative, does not feel that the Appellant's unpredictable health conditions will be appropriately monitored in a setting other than a nursing home, and she does not agree to her [redacted] placement in an ALP. The Appellant resides in the Respondent's facility and cannot be involuntarily discharged to an ALP if she does not choose to participate in the program. 10 NYCRR 494.4(d)(4). While it may or may not be the case that [redacted], or any ALP, is able to meet the Appellant's needs, it is not an appropriate discharge location unless the Appellant agrees to transfer.

Lastly, it is noted that it became evident during the hearing that the reason for Appellant's discharge was not that which is stated in the discharge notice. The Respondent's case focused almost exclusively on its inability to meet the Appellant's safety needs due to her exit-seeking behaviors. (Exhibits D, F, H; T. Wallace, Sininsky, Panagos.) Brian Sininsky, the Nurse Supervisor, testified that the Respondent's facility doesn't have a unit fit for the Appellant's needs, that she "needs a [redacted] where she can [redacted]." (T. Sininsky.) Matina Panagos, the Director of Social Work, testified that "this facility is not appropriate for [the Appellant] because she escapes." (T. Panagos.) Evonne Wallace, the Director of Case Management, testified that the concern is for her safety due to her exit-seeking behaviors. (T. Wallace.)

When discharge is necessary for a resident's safety because the resident's needs cannot be met in the facility, the resident's medical record must include documentation by the resident's physician of the specific needs that cannot be met, the facility attempts to meet the resident's needs and the services available at the receiving facility that will meet those needs. PHL § 2803-z(1)(d); 42 CFR 483.15(c)(2)(i)(B). The Appellant is entitled to written notice that specifies the reason for discharge. The subject of this hearing is the [redacted] 2025, discharge notice and the reason for discharge cited therein. Any alternative reason for discharge requires a new written notice to be issued to the Appellant and her representative.

Nursing homes, which "should be viewed as much as homes as medical institutions" (10 NYCRR 415.12(a)(5)), are "responsible for the health and well-being" of their residents, including

"the [redacted] conditions." 10 NYCRR 415.1(a)(1). They are obligated to provide care and services to their residents to attain the highest practicable physical, mental and psychosocial well-being. 10 NYCRR 415.12.

The evidence submitted by the Respondent fails to show any significant change or improvement to the Appellant's health since her admission to the facility, and it contradicts the assertion that she no longer requires nursing home care. Medically, the Appellant continues to need skilled monitoring and oversight of her [redacted] health conditions. (Exhibits A, H.) Functionally, the Appellant now requires "constant" supervision or physical assistance for mobility, transfer, and toileting tasks. (Exhibit I.) The comprehensive assessment dated [redacted] 2025, classified the Appellant in the [redacted] category for the nursing component, which qualifies her for skilled nursing facility level of care. (Exhibit J.)

The Respondent failed to meet its burden to prove that the discharge is necessary and that the discharge location is appropriate.

DECISION AND ORDER

The Respondent has not met its burden of proving that the Appellant's discharge is necessary and that the discharge plan was appropriate.

The Respondent is not authorized to discharge the Appellant under the [redacted] 2025, notice.

Dated: June 27, 2025
Rochester, New York

Kendra Vergason
Administrative Law Judge