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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 10, 2025

CERTIFIED MAIL/RETURN RECEIPT

[redacted]
c/o Brookhaven Rehabilitation and Health Care Center
250 Beach 17th Street
Far Rockaway, New York 11691

Barbara Phair, Esq.
Abrams Fensterman, LLP
3 Dakota Drive, Suite 300
Lake Success, New York 11042

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 **Brookhaven Rehabilitation and Health Care Center,** Respondent, to discharge him from a residential health care facility.	**DECISION AFTER HEARING** #DA25-6602

Hearing before: Jeanne T. Arnold
Administrative Law Judge

Held at: New York State Department of Health
by videoconference
June 6, 2025

Parties: Brookhaven Rehabilitation and Health Care Center
250 Beach 17th Street
Far Rockaway, New York 11691
By: Barbara Stegun Phair, Esq.
Abrams Fensterman, LLP
3 Dakota Drive, Suite 300
Lake Success, New York 11042

[redacted] *pro se*
Brookhaven Rehabilitation and Health Care Center

JURISDICTION

Brookhaven Rehabilitation and Health Care Center (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 nursing home. The

Appellant appealed the discharge determination to the New York State Department of Health pursuant to 10 NYCRR 415.3(i).

HEARING RECORD

Facility witnesses:	Kolawole Odulaja, MD, Physician Regina DeLeon, Director of Rehabilitation Services Arleen Comrie, Director of Nursing Tamisha Collins-Jonas, RN Wound Care Specialist Shanice Davis, Social Worker Christopher Hong, Director of Social Services
Facility exhibits:	1-5
Appellant witness:	[redacted]
Appellant exhibits:	None
ALJ exhibits:	I-II

A digital recording of the hearing was made. (1h17m.) Testimony is indicated by "T".

SUMMARY OF FACTS

1. The Facility is a residential health care facility, or nursing home, within the meaning of PHL § 2801.2, located in Far Rockaway, New York.

2. The Appellant, age [redacted] has been a short-term resident of the Facility since [redacted] 2024 after acute care hospitalization for, among other things, [redacted]. (Exhibit II.)

3. By notice dated [redacted], 2025, the Facility advised the Appellant it had determined to discharge him from the Facility on [redacted], 2025 on the grounds that his health has improved sufficiently that he no longer needs the services provided by the Facility. (Exhibit I.)

4. The Appellant is medically stable. He has pressure ulcers of his [redacted] and [redacted], but they have improved and can be managed by the Appellant in the community. (Exhibit 1; T Odulaja, Collins-Jonas.)

5. The Appellant can ambulate independently with cane support both on and off the Facility unit. He independently performs activities of daily living (ADLs). He no longer receives Physical Therapy (PT) or Occupational Therapy (OT) at the Facility because he is functioning at his optimal level and manages his own health care needs. (Exhibits 1, 2, 4; T DeLeon, Comrie.)

6. The Appellant's physician at the Facility, Dr. Odulaja, determined and documented in the Appellant's clinical record that the Appellant is medically cleared for a safe discharge to, among other places, a shelter. (Exhibit 1; T Odulaja.)

7. The discharge notice advised the Appellant he would be discharged to the [redacted] Shelter, [redacted]. (Exhibit I.) The shelter accepted the Appellant for placement and the Facility issued Discharge Planning Instructions and will refer the Appellant to an appropriate primary care physician and wound care clinic. (Exhibits 3, 5; T Collins-Jonas, Davis, Hong.)

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

ISSUE

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

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); 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) which 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.
>
> ...
>
> (ii) ensure complete documentation in the resident's clinical record when the facility transfers or discharges a resident under any of the circumstances specified in subparagraph (i) of this paragraph. The documentation shall be made by:
>
> (a) the resident's physician and, as appropriate, interdisciplinary team when transfer or discharge is necessary under subclause...(2) of clause (a) of subparagraph (i) of this paragraph
>
> ...
>
> (vi) 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 and provide a discharge summary pursuant to section 415.11(d) of this Title.

The Facility shall use its best efforts to secure appropriate placement or a residential arrangement for the resident, other than temporary housing assistance such as

a shelter. PHL § 2803-z(1)(b). The Facility has the burden of proving that the discharge is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

The Facility has established that the Appellant is not in need of nursing home care. This is the professional opinion of the Facility's care team, including the Appellant's treating physician, nurse, wound care and rehabilitation specialists. (Exhibits 1, 2; T Odulaja, DeLeon, Comrie, Collins-Jonas.) The Appellant is alert, cognitively intact and a strong self-advocate. (Exhibits 1, 2; T Appellant.) He can self-administer his medications, ambulates independently or sometimes with cane assistance, is independent with ADLs, and was discharged from both PT and OT because he reached his optimal performance level. (Exhibits 1, 2, 4; T Odulaja, DeLeon, Comrie, Collins-Jonas.)

Dr. Odulaja and Nurse Collins-Jonas explained that the Appellant was admitted to the Facility with pressure ulcers that caused Stage [redacted] wounds, but they have improved, and the Appellant has learned to do his own wound care. The wound dressings must be changed once to three times weekly; however, if discharged, the Appellant will be referred to a community wound clinic to assist when and if the Appellant requires assistance. (T Collins-Jonas.) Indeed, the Appellant testified that he does a better job changing his own wound dressings than the Facility staff and that he knows how to care for himself. All agreed that the Appellant often refuses the assistance of the Facility staff in caring for his needs. (Exhibit 4; T Appellant, Comrie, Collins-Jonas.)

The Appellant's physician and interdisciplinary team have collaborated and have evaluated the Appellant and documented in the Facility record, in compliance with 10 NYCRR 415.3(i)(1)(ii)(a), that he does not need nursing home care, can return to the

community and that a shelter is an appropriate discharge location. (Exhibit 1, 2, 3, 5; T Odulaja, DeLeon, Comrie, Collins-Jonas Dunlap.) The Appellant presented no evidence to support his claim that he still requires nursing home care. While he testified that he suffers from ailments other than his pressure ulcer wounds, including [redacted] which causes [redacted], he also emphasized that he knows how to care for himself. In fact, the Appellant expressed dismay that when he provides self-care in the nursing home, he is reprimanded and penalized for doing so by the Facility staff. (T Appellant.) Appropriate grounds for discharge have been established.

A nursing home must 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 Facility has complied with this regulation by making efforts to include the Appellant in discharge planning. (Exhibit 3; T Davis, Hong.) Referrals to four assisted living facilities were made but the Appellant was not accepted due to [redacted] concerns. (Exhibit 3.)

The Appellant testified that he wishes to reside in an apartment. Facility Social Worker Davis has been working with [redacted] an independent housing consultant who frequents the Facility and the Appellant to identify housing options. A potential apartment match was only just identified on [redacted] The Appellant indicated that he would accept that apartment immediately if available. All agreed that they would follow up on that apartment lead after the hearing.

The Appellant is entitled to an appropriate discharge plan that meets his needs. He is not entitled to nursing home care that he does not need. The Facility has

established that it made its best efforts, in accordance with PHL § 2803-z(1)(b), to find housing other than temporary housing.

In the meantime, the Facility referred the Appellant to the [redacted] Shelter and he was accepted for placement. (Exhibit 3; T Hong.) Prescriptions for medications will be provided, as well as transitional care appointments and referrals. The Facility provided proposed Discharge Planning Instructions for the Appellant. (Exhibit 5.) [redacted], the housing consultant, and Facility employees remain available to assist the Appellant with finding alternative living arrangements if he is willing to cooperate and accept their assistance. (T Davis, Hong.)

Under these circumstances, the Facility's discharge plan is appropriate. However, since an apartment was potentially located for the Appellant contemporaneously with the current hearing, the discharge date will be extended to [redacted] 2025, to allow the Appellant to potentially move into that apartment. If the apartment is no longer available, the Facility is entitled to proceed with its discharge plan as contemplated in its notice.

DECISION: The Facility has established valid grounds for the discharge of the Appellant and has established that its discharge plan is appropriate. The Facility is authorized to discharge the Appellant in accordance with its discharge notice on or after [redacted], 2025.

Dated: Rochester, New York
June 9, 2025

Jeanne T. Arnold
Administrative Law Judge

To: Barbara Stegun Phair, Esq.
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