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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

Yaakov Klein, Administrator
Ellicott Center for Rehabilitation and Nursing
200 Seventh Avenue
Buffalo, New York 14201

[redacted]
C/O Ellicott Center for Rehabilitation and Nursing
200 Seventh Avenue
Buffalo, New York 14201

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,

COPY

from a determination by

DECISION

Ellicott Center for Rehabilitation and Nursing
Respondent,

to discharge her from a residential health care facility.

Hearing Before: Jean T. Carney
Administrative Law Judge

Held via: Cisco WebEx videoconference

Hearing Date: June 25, 2025

Parties: [redacted] Appellant, *Pro se*
[redacted]

Ellicott Center for Rehabilitation
and Nursing, Respondent
By: Enijah Patterson, Assistant Administrator
epatterson@ellicottcenter.net

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[1] The documentation received from the Case Resolution Unit misspelled the Appellant's name. The correct spelling is reflected here.

JURISDICTION

Ellicott Center for Rehabilitation and Nursing (Facility or Respondent), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [redacted] (Appellant or Resident) from the 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

In support of its determination, the Facility presented documents (Exhibits 1-6); and the testimony of James Lockwood, Director of Nursing (DON); Nitin Arora, MD, Medical Director; and Enijah Patterson, Assistant Administrator. The Appellant testified in her own behalf. The Notice of Hearing with Discharge Notice and Resident's face sheet were admitted into evidence as ALJ I and ALJ II respectively. The hearing was digitally recorded and made part of the record.

ISSUES

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

FINDINGS OF FACTS

Citations in parentheses refer to the testimony of the witness ("T") at the hearing and exhibits ("Exh") found persuasive in arriving at a particular finding. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is a [redacted]-year-old female who was admitted to the Facility on [redacted], 2024, from [redacted] with relevant diagnoses of [redacted]. (ALJ II).

2. By notice dated [redacted] 2025, the Facility determined to discharge the Appellant on the grounds that her health has improved sufficiently so she no longer needs the services provided by the facility. The proposed discharge location is to the [redacted] Hotel, [redacted], New York. (ALJ I).

3. The Appellant was discharged from physical therapy on [redacted], 2025. On [redacted], 2025, an evaluation for occupational therapy determined that those services were not necessary. The Appellant is independent in her activities of daily living (ADLs), such as toileting, ambulating, feeding and dressing herself. She does not use any assistive devices while ambulating; and she has no nursing or clinical needs that require the services of a skilled nursing facility. The Appellant is alert and capable of making decisions regarding her care. (Exhs 1, 4, and 5; T Dr. Arora, Mr. Lockwood, and Appellant).

4. The Facility worked with the Appellant in applying to [redacted], a program that assists people in finding housing. [redacted] provided contact information and applications for several subsidized housing opportunities in the area; but the Appellant has been inconsistent with following up with those resources. She was recently recommended to apply for public housing. The Appellant wishes to remain in [redacted] but she has no family or friends with whom she could reside. (Exhs 2 and 3; T Mr. Patterson and Appellant).

APPLICABLE LAW

A residential health care facility, also referred to as a nursing home, is a facility that provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. (Public Health Law §§ 2801[2] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(1)(i)(a), a resident may only be discharged when the interdisciplinary care team determines that:

(1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;

(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;

(3) the safety of individuals in the facility is endangered; or

(4) the health of individuals in the facility is endangered.

Additionally, 10 NYCRR § 415(i)(1)(ii) requires that the facility ensures complete documentation in the resident's clinical record when transferring or discharging a resident under the above circumstances. The documentation shall be made by:

(a) the resident's physician and, as appropriate, interdisciplinary care team, when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; and

(b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph.

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision. (*Stoker v. Tarantino*, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3rd Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

DISCUSSION

The Facility has met its burden of showing that the discharge is necessary, and the discharge plan is appropriate. A discharge plan must "[address] the medical needs of the resident and how these will be met after discharge." (10 NYCRR § 415.3[i][1][vi]). The evidence establishes that the Appellant's medical needs can be met in the community, and she no longer needs the services provided in the Facility. The DON's testimony establishes that the Appellant is independent in her ADLs and can manage her needs in the community. Dr. Arora's testimony corroborates the grounds alleged in the Discharge Notice, and demonstrates that the Appellant's health has improved sufficiently so that she no longer needs the services provided by the Facility.

The Facility has also met its burden in demonstrating that the discharge location is appropriate. The Facility has worked with the Appellant in trying to find alternate discharge locations. The Appellant has family in [redacted] but the Appellant is not comfortable living with family. She wishes to remain in [redacted] but her only friend in [redacted] would jeopardize their own subsidized housing if the Appellant were to move in. Having explored all other options, discharging the Appellant to a hotel is the only available alternative.

The Appellant admits that she no longer needs the services of the Facility; but opposes being discharged to a hotel because it is a temporary solution that does not resolve her homelessness. She would like more time to save enough money from her Supplemental Security Income (SSI) to secure an apartment. The Appellant testified that she is currently on probation, which also limits her housing options.

The evidence establishes that the Appellant was discharged from rehabilitation services in [redacted] of 2025, and she has no skilled nursing needs. The evidence also establishes that the Facility has worked with the Appellant to explore other discharge locations; but at this time, discharge to a hotel is the only available option.

ORDER

Ellicott Center for Rehabilitation and Nursing has established that its determination to discharge the Appellant is necessary, and that the discharge location is appropriate.

1. The Facility is authorized to discharge the Appellant as provided in the Discharge Notice 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: **June 30, 2025**
Albany, New York

JEAN T. CARNEY
Administrative Law Judge

TO: Yaakov Klein, Administrator
Ellicott Center for Rehabilitation and Nursing
200 Seventh Avenue
Buffalo, New York 14201
yklein@centershealthcare.org

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