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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

July 2, 2025

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o Brooklyn Gardens Nursing and
Rehabilitation Center
835 Herkimer Street
Brooklyn, New York 11233

Nathan Pasik, Administrator
Brooklyn Gardens Nursing and
Rehabilitation Center
835 Herkimer Street
Brooklyn, New York 11233

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

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: nm
Enclosure

STATE OF NEW YORK
DEPARTMENT OF HEALTH

In the Matter of an Appeal, pursuant to
10 NYCRR 415.3, by

 Appellant,

from a determination by

**Brooklyn Gardens Nursing and
Rehabilitation Center**

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

#DA25-6611

Hearing before: Shelby L. Foster
Administrative Law Judge

Held via: Webex Videoconference

Hearing Date: June 30, 2025

Parties: Brooklyn Gardens Nursing and Rehabilitation Center
835 Herkimer Street
Brooklyn, NY 11233

By: Barbara Stegun Phair
Abrams Fensterman, LLP
3 Dakota Drive, Suite 300
Lake Success, NY 11042


c/o Brooklyn Gardens Nursing and Rehabilitation Center
835 Herkimer Street
Brooklyn, NY 11233

By: pro se

JURISDICTION

By notice dated ██████, 2025, Brooklyn Gardens Nursing and Rehabilitation 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
Respondent's Witnesses:	Virender Hak, MD, Primary Care Physician for Appellant Louisville Manansala, Physical Therapist Shantol Farr, Nursing Supervisor Jasneth Mitchell, Social Worker
Respondent's Exhibits:	1 – MD Note 2 – IDT Discharge Summary Plan 3 – DHS Application 4 – Social Services Notes 5 – PT and OT Notes 6 – PT and OT Discharge
Appellant's Witnesses:	██████ Appellant

A digital recording of the hearing was made. (1:30:34 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 [REDACTED]-year-old male who was admitted to the Respondent facility on [REDACTED] 2025, for subacute rehabilitation after a hospital stay. (Exhibit [Ex.] 1; Testimony [T.] Hak, Farr.)
2. The Appellant continues to receive [REDACTED] treatment at the Respondent facility. (T. Hak, Farr.)
3. The Appellant was discharged from physical therapy (PT) and occupational therapy (OT) on [REDACTED], 2025, after achieving his highest practical level. (Ex. 6; T. Manansala.)
4. The Appellant is not in need of nursing home care. He is independent in his activities of daily living (ADLs) and is able to ambulate [REDACTED] feet using a rollator. (Ex. 6; T. Hak, Manansala, Farr, Mitchell.)
5. The Appellant's clinical record includes documentation made by a physician confirming that he is medically stable for discharge to shelter and that his medical needs can be met after discharge from the facility. (Ex. 1.)
6. The Appellant requested discharge to a shelter. (Ex. 4; T. Mitchell, [REDACTED])
7. By notice dated [REDACTED] 2025, the Respondent advised the Appellant of its determination to discharge him on [REDACTED], 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 Ex. I.)

8. The discharge notice advised the Appellant that he would be discharged to the [REDACTED] Shelter, located at [REDACTED] NY [REDACTED] (ALJ Ex. I.)

9. The Appellant timely appealed the Respondent's discharge determination and proposed discharge location.

10. 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). Further, the facility shall use its best efforts to secure appropriate placement or a residential arrangement for the resident, other than temporary housing. PHL § 2803-z(1)(b).

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 he no longer needs the services provided there. The Appellant is independent in all ADLs and is not receiving any care uniquely provided by a nursing home. The Respondent has determined to discharge the Appellant to the ██████████ Shelter. (Ex. ALJ I.)

Although the Appellant maintains that he is ill, he does not dispute that he no longer requires the services of a nursing home. However, the Appellant disputes the proposed discharge plan because he does not trust that he can meet his medical needs at a shelter. The Appellant testified that he requires ██████████ three to four times a day, several medications, and uses a walker. He's been in the shelter system before and doesn't think he can get what he needs there. He agrees that he is medically stable but is concerned that if he doesn't receive proper treatment, he may regress. He's requesting more time to make his own arrangements.

Shantol Farr, the Respondent's Nursing Supervisor for the ██████████, testified that before discharge, the Appellant will be provided with diagnosis and medication education and a walker. Social Worker Jasneith Mitchell testified that the Appellant will be discharged with 10 days of medication, then it will be his responsibility to get his own medication. As part of the discharge plan, the Respondent has already informed shelter intake of the Appellant's follow-up appointments and his ██████████ schedule. (Ex. 3.) Ms. Farr and Ms. Mitchell both testified that the Respondent's ██████████ will arrange transportation from wherever the

Appellant is placed to Brooklyn Gardens for his ██████ treatment. His ██████ will not be interrupted in any way.

Ms. Mitchell testified that the Appellant advised that he could not return to his ██████ house, could not go to his ██████ house, and refused to consider an Assisted Living Facility. He specifically requested discharge to a shelter. (Ex. 4.)

The Appellant referred to the DHS Application (Ex. 3.), specifically the Absolute Exclusion Criteria, in support of his contention that there is another option available to him that Ms. Mitchell did not pursue. The Appellant's clinical record does not document that he meets any of the listed health conditions, limitations, or functional needs that would exclude him from shelter placement. In completing the DHS Application, Ms. Mitchell was acting in compliance with the Appellant's request to be discharged to a shelter. As his conditions do not exclude him from shelter placement, she was not under any obligation to pursue alternative housing. With that being said, the Appellant did request Ms. Mitchell's assistance in completing HRA form 2010e. (Ex. 4.) Ms. Mitchell testified that she was not able to assist the Appellant because she does not have access to the necessary system; however, she advised the Appellant that HRA would be able to assist him in completing that form.

The Appellant has not been transparent with the Respondent throughout the discharge planning process. He testified that he requested discharge to a shelter because he knew he wouldn't be accepted and "was using the ploy to buy time." However, the shelter has accepted him, and discharge is proceeding.

The record establishes that the Facility has used its best efforts to secure appropriate placement, including a residential arrangement for the Appellant, as required by PHL § 2803-z(1)(b). The Facility has established that the shelter is an appropriate discharge location for the Appellant, consistent with his request.

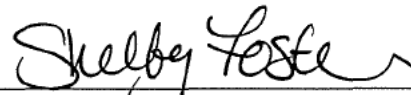
DECISION

Brooklyn Gardens Nursing and Rehabilitation Center has established that the Appellant's discharge plan is appropriate.

1. Brooklyn Gardens Nursing and Rehabilitation Center is authorized to discharge the Appellant pursuant to the Notice of Discharge dated ██████ 2025, on or after ██████ 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

July 2, 2025



Shelby L. Foster
Administrative Law Judge

To: Barbara Stegun Phair
Abrams Fensterman, LLP
3 Dakota Drive, Suite 300
Lake Success, NY 11042
Email: bphair@abramslaw.com

[REDACTED] Brooklyn Gardens Nursing and Rehabilitation Center

[REDACTED]
c/o Brooklyn Gardens Nursing and Rehabilitation Center
835 Herkimer Street
Brooklyn, NY 11233
Email: [REDACTED]