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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

August 7, 2025

**CERTIFIED MAIL/RETURN RECEIPT**

[redacted]
c/o Momentum at South Bay
340 E Main Street
East Islip, New York 11730

Joseph Aplustille, LNHA
Momentum at South Bay
340 E Main Street
East Islip, New York 11730

[redacted]

[redacted]
(by email)

**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

**Momentum at South Bay for Rehabilitation and Nursing**
Respondent,

to discharge him from a residential health care facility.

COPY

**DECISION AFTER HEARING**

**#DA25-6618**

Hearing before: Shelby L. Foster
Administrative Law Judge

Held via: Webex Videoconference

Hearing Dates[1]: July 22, 2025
July 28, 2025

Record Closed: July 30, 2025

Parties: Momentum at South Bay for Rehabilitation and Nursing
340 E. Main Street
East Islip, New York 11730
By: Joseph Aplustille, LNHA, Administrator

[redacted]
c/o Momentum at South Bay for Rehabilitation and Nursing
340 E. Main Street
East Islip, New York 11730
Assisted By: [redacted] Advocate/[redacted]
[redacted] Advocate/[redacted]

[1] A hearing was scheduled for July 9, 2025. During pre-hearing discussion, the matter was adjourned to July 22, 2025, upon consent of all parties. On July 22, 2025, both parties expressed interest in coming to an agreement, and the matter was adjourned to July 28, 2025, upon consent of all parties.

## JURISDICTION

By notice dated [redacted], 2025, Momentum at South Bay for Rehabilitation and Nursing (Respondent), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [redacted] (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 – Rehab Screening [redacted]-25<br>III – PT Eval [redacted]-25<br>IV – OT Eval [redacted]-25 |
| Respondent's Witnesses: | Joe Aplustille, LNHA, Administrator<br>Jacqueline Hutter, Director of Social Work<br>Dawn Stevens, Social Worker<br>Jennifer Obijuru, Director of Rehabilitation<br>Adrienne Northe, RN, Unit Manager<br>Igor Gutnik, MD, Attending Physician |
| Also Present: | Madeline Moritz, Momentum Corporate Team<br>Jennifer Meratore, RN, Staff Educator |
| Respondent's Exhibits: | 1 – Additional Nursing Notes<br>2 – Additional Physician Notes<br>3 – Additional Social Work Notes<br>4 – ADL Care Plan<br>5 – BIMS and Section C MDS<br>6 – Discharge Physician Order<br>7 – Discharge Planning Notes<br>8 – Discharge Summary 2 |

9 – Floor Ambulation Log
10 – Functional Abilities Task Performance
11 – OT Discharge Summary 2
12 – Physician Discharge Summary 2
13 – PT Discharge Summary 2
14 – Summary
15 – Discharge Care Plan
16 – Behavior Care Plan
17 – Progress Notes
18 – Social Work Note [redacted]-25

Appellant's Witnesses: [redacted] Appellant

Appellant's Exhibits:
A – Letter from [redacted], MD FAAOS
B – Letter from [redacted] MD
C – Letter from [redacted] MD
D – Letter from [redacted], MD FACS

Digital recordings of the hearings were made. (24:08 in duration on July 22, 2025, and 3:16:04 in duration on July 28, 2025.)[2]

## ISSUES

Has the Respondent established that its determination to discharge the Appellant is permissible and that its discharge plan is appropriate?

## FINDINGS OF FACT

1. The Appellant is a [redacted]-year-old female who was admitted to the Respondent facility on [redacted] 2024, for short-term rehabilitation after a fall. (Exhibit [Ex.] 14; Testimony [T.] Aplustille, Hutter, Northe, Gutnik.)

2. The Appellant was discharged from physical therapy (PT) and occupational therapy (OT) on [redacted], 2025, after achieving her highest practical level. At that time, the

[2] Citations to Testimony [T.] refer to the digital recording made on July 28, 2025.

Appellant was able to safely ascend/descend ten steps with minimal assistance and was independent or modified independent in her activities of daily living (ADLs). (Exs. 11,13; T. Obijuru, Stevens.)

3. The Appellant's clinical record includes documentation made by a physician that she is no longer in need of skilled nursing and rehab services and is stable for discharge home. (Ex. 12; T. Gutnik.)

4. By notice dated [redacted] 2025, the Respondent advised the Appellant of its determination to discharge her 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 Exhibit I.)

5. The discharge notice advised the Appellant that she would be discharged to her [redacted] house, located at [redacted] New York [redacted] (the [redacted] House). (ALJ Ex. I.)

6. The Respondent performed a virtual assessment of the [redacted] House and is aware that the Appellant must navigate steps to access the residence. (T. Brown.)

7. The Appellant can access the [redacted] House by a deck with three steps in the back, or five steps in the front. The landlord is modifying the top step in the front to ease access for the Appellant, which may increase the front steps by one step, amounting to a total of six. That modification is scheduled to be completed by [redacted] 2025. (T. Brown, [redacted].

8. At the time of the hearing, July 28, 2025, the Appellant was not receiving any PT or OT services at the facility. (T. Obijuru.)

9. The Appellant submitted three letters from providers in the community, dated [redacted] and [redacted] 2025, recommending she continue PT. (Exs. A, B, D.)

10. The Respondent began PT and OT evaluations of the Appellant on [redacted] 2025, at the family's request. (T. Obijuru.)

11. The PT evaluation results, dated [redacted] 2025, indicate the Appellant is able to negotiate two steps with maximal assistance. The OT evaluation results, dated [redacted] 2025, indicate that the Appellant needs assistance with ADLs, specifically toileting and dressing. (ALJ Exs. III, IV.)

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

13. 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. In addition, the Respondent has determined to discharge the Appellant to the [redacted] House. (ALJ Ex. I.)

Igor Gutnik, MD, the Respondent's Attending Physician, testified that the Appellant does not require the skilled nursing services provided by the facility. Similarly, Joe Aplustille, LNHA, the Respondent's Administrator, and Social Worker Dawn Stevens, both testified that the Appellant does not require skilled nursing care. Jennifer Obijuru, the Respondent's Director of Rehabilitation, testified that the Appellant no longer requires the skilled rehabilitation services provided by the facility. This testimony has been contradicted by the Respondent's own clinical documentation.

The Respondent performed a virtual assessment of the [redacted] House while conducting discharge planning. They have observed and are aware that the Appellant must navigate five to six steps to access the discharge location. When the Appellant was discharged from PT on [redacted], 2025, she was able to navigate [redacted] steps. (Ex. 13.)

The Respondent has not provided stair or step training since the Appellant's discharge from PT on [redacted] 2025. When the Appellant was evaluated in [redacted] at the request of the family[3], it was documented that she had experienced a decrease in functional mobility and demonstrated "decreased stair negotiation skills." The PT evaluation dated [redacted] 2025,

[3] Despite three letters from the Appellant's medical providers in the community recommending continued physical therapy, the Respondent did not evaluate the Appellant until they were attempting to reach a good-faith agreement with the family between the two recorded hearing dates.

clearly documents that the Appellant is only able to navigate [redacted] steps with maximal assistance. (ALJ Ex. III.)

Adrienne Northe, RN, Unit Manager at the Respondent facility, testified that the Appellant has been stable and hasn't required skilled nursing care. She testified that the Appellant gets assistance with her ADLs, but she is independent, with no hands-on care from nursing staff. When the resident was discharged from OT on [redacted]25, she was independent or modified independent in her ADLs. (Ex. 11.)

When the Appellant was evaluated in [redacted] it was documented that the Appellant needs assistance with toileting and [redacted] dressing. The OT evaluation dated [redacted] 2025, clearly indicates that the Appellant presented "w[ith] [redacted] [redacted] standing and [redacted] which indicates the need for skilled OT services." (ALJ Ex. IV.)

The Respondent has not met its burden to show that the Appellant's health has improved sufficiently so that discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(a)(2). Further, based on the Respondent's documentation, the Appellant cannot access the [redacted] House. It is therefore not a safe and appropriate discharge plan.

## DECISION

Momentum at South Bay for Rehab and Nursing has not established that its determination to discharge the Appellant is permissible or that its discharge plan is appropriate.

1. Momentum at South Bay for Rehab and Nursing is not 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
August 6, 2025

Shelby L. Foster
Administrative Law Judge

To: Joseph Aplustille, LNHA, Administrator
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