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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

September 22, 2025

CERTIFIED MAIL/RETURN RECEIPT

Nicholas Sumo, Esq.
Garfunkel Wild
111 Great Neck Road, Suite 600
Great Neck, New York 11021

c/o [REDACTED] Guardian of Person
[REDACTED]

Deepankar Mukerji, Esq.
445 Hamilton Avenue, Suite 1102
White Plains, New York 10601

Jessica Moore, Esq.
Falcon Rappaport & Berkman LLP
265 Sunrise Highway, Suite 50
Rockville Centre, New York 11570

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: cmg
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

King Street Rehab
Respondent,

to discharge her from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

#DA25-6625

Hearing before: Shelby L. Foster
Administrative Law Judge

Held via: Webex Videoconference

Hearing Dates¹: August 21, 2025
August 29, 2025
September 3, 2025

Record Closed: September 3, 2025

Parties: King Street Rehab
787 King Street
Port Chester, New York 10573
By: Nicholas Sumo, Esq.
Robert Rothman, Esq.
Lauren Levine, Esq.
Garfunkel Wild
111 Great Neck Road, Suite 600
Great Neck, New York 11021

¹ The hearing was originally scheduled for July 23, 2025. Both parties requested lengthy adjournments. A pre-hearing conference was held on July 30, 2025. There was extensive pre-hearing discussion that included the possibility of settlement; however, the parties were unable to come to terms. Due to the scheduling conflicts of both attorneys and their clients, the hearing commenced August 21, 2025.

c/o [REDACTED] Guardian of Person
[REDACTED]

By: Allon Lifshitz, Esq.
Olivia Daniels, Esq.
Cohen & Gresser
800 Third Avenue
New York, New York 10022

Also Appearing:

Yale New Haven Health Services Corporation
By: Jessica Moore, Esq.
Falcon Rappaport & Berkman LLP
265 Sunrise Highway, Suite 50
Rockville Centre, New York 11570

[REDACTED] Guardian of Property
By: Deepankar Mukerji, Esq.
445 Hamilton Avenue, Suite 1102
White Plains, New York 10601

JURISDICTION

By notice dated ██████████, 2025, King Street Rehab (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. ██████████ Guardian of the Person for Ms. ██████████ 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).

HEARING RECORD

ALJ Exhibits: I – Notice of Hearing and Notice of Discharge
II – ██████████ -Clinical Records (P1-6)

Respondent's Witnesses: Jennifer Wilner, Administrator
Albert Riddle, MD, Medical Director
William Jacobson, MD, Medical Provider
Colleen Martin, Assistant Administrator

Respondent's Exhibits: 1 – 24

Appellant's Witnesses: None

Appellant's Exhibits: A – D

Digital recordings of the hearings were made. (Recording 1 was 4:33:36 in duration on August 21, 2025; Recording 2 was 4:45:13 in duration on August 29, 2025; and Recording 3 was 43:34 in duration on September 3, 2025.)

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 an -year-old female who was admitted to the Respondent facility on , 2023, for long-term care, with diagnoses of (Exhibit [Ex.] 3; Recording 1 @ 3:04, Recording 2 @ 1:25.)

2. The Appellant's act as her guardians. is Guardian of the Person, and is Guardian of the Property. For purposes of this decision, they will be collectively referred to as "the Guardians." (Recording 1 @ 0:58.)

3. On 2025, the Appellant was sent to Hospital (Hospital) to rule out a after with . (Ex. 12; Recording 1 @ 4:25, Recording 2 @ 2:14.)

4. On 2025, while the Appellant was still inpatient at the Hospital, the Respondent issued a discharge notice advising the Appellant of its determination to discharge her that same day. The stated grounds for discharge were that the resident's needs cannot be met after reasonable attempts at accommodation in the facility, the safety of individuals in the facility would be endangered, and the health of individuals in the facility would be endangered. (ALJ Ex. I.)

5. The discharge notice advised the Appellant that she "can be admitted to located at , New York (or any

alternate option listed below if [REDACTED] is not acceptable to the resident and/or her legal guardians)." (ALJ Ex. I.)

6. The Appellant timely appealed the Respondent's discharge determination and proposed discharge locations.

7. The Appellant has been medically cleared for discharge from the Hospital since [REDACTED] 2025. (ALJ Ex. II)

8. The Appellant remains at the Hospital pending the outcome of this hearing, as the Respondent has refused to readmit her until ordered to do so.

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:
 - (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;
 - ...
 - (3) the safety of individuals in the facility is endangered; or
 - (4) the health of individuals in the facility is endangered;
 - ...

Before a facility transfers or discharges a resident, it must notify the resident and any designated representative(s) of the transfer or discharge and record the reasons in the medical record. 10 NYCRR 415.3(i)(1)(iii); 42 CFR 483.15(c)(3). The written notice must include the reason for transfer or discharge, the specific regulations that support the action, the effective date of transfer or discharge, and the location to which the resident will be transferred or discharged. 10 NYCRR 415.3(i)(1)(v); 42 CFR 483.15(c)(5).

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 that 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 facility has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

The Respondent has determined to discharge the Appellant, who remains at the Hospital, on the grounds that the Appellant's needs cannot be met at its facility, and the health and safety of individuals in the facility is endangered. The Appellant has been medically cleared for discharge from the Hospital since [REDACTED], 2025, but the Respondent has refused to accept her return.

Grounds for Discharge

The Respondent's witnesses testified at great length regarding the behaviors of the Guardians and how they have impacted the staff's ability to care for the Appellant, in addition to endangering the health and safety of others in its facility. The Respondent submitted several witness affirmations, staff statements, letters, and progress notes detailing the Guardians' alleged interference and conduct, as well as the facility's attempts to work with them and their chosen outside providers. (Exs. 1, 4 – 9, 13, 15 – 18, 20, 23.)

When alleging that discharge is appropriate because the resident's needs cannot be met after reasonable attempts at accommodation in the facility, the necessity of the discharge must be documented in the resident's medical record by their physician. This documentation must include the specific resident needs that cannot be met, the facility's attempts to meet them, and the services available at the receiving facility to meet the needs. PHL § 2803-z(1)(d); 10 NYCRR 415.3(i)(1)(ii)(a) and (iii)(b); 42 CFR 483.15(c)(2)(i)(B) and (ii)(A). The Respondent failed to provide the required documentation: a note from the Appellant's medical record, made by her physician, explaining the necessity of her discharge, what

needs cannot be met, efforts made to meet them, and how the new facility will meet those same needs.

When alleging that a discharge is appropriate because the safety or health of individuals in the facility is endangered, the necessity of the discharge must be documented in the resident's medical record by a physician. This documentation must include the risks to the resident or others if the resident were to remain in the facility. PHL § 2803-z(1)(e); 10 NYCRR 415.3(i)(1)(ii)(b) and (iii)(b); 42 CFR 483.15(c)(2)(i)(A) and (ii)(B). The Respondent failed to provide the required documentation: a note from the Appellant's medical record, made by a physician, explaining the necessity of the discharge and the risks to the Appellant or others if she were to remain there.

The Respondent has failed to meet its burden to show that the Appellant's discharge is permissible.

Discharge Plan

The discharge notice fails to propose a specific discharge location. Instead, the notice provides a list of possibilities including that "she *can be* admitted to ██████████ ██████████, New York ██████████ (or any alternate option listed below if ██████████ is not acceptable to the resident and/or her legal guardians)" (emphasis added). It goes on to provide the names and addresses of three alternative locations that the Appellant "*could potentially go to* in the event that ██████████ ██████████ is unacceptable," (emphasis added) and further advises that the Guardians can, "if Ms. ██████████ has the means, arrange for Ms. ██████████ to live in a private residence with 24/hour care." The Respondent alleged difficulty in the discharge planning process, again,

due to interference by the Guardians. However, inasmuch as the notice fails to meet regulatory requirements, the Respondent's contentions will not be considered.

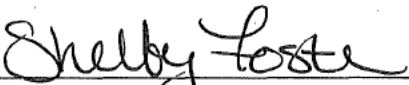
The Respondent has failed to meet its burden to show that its proposed discharge plan is appropriate.

DECISION

King Street Rehab has not established that its determination to discharge the Appellant is permissible or that its discharge plan is appropriate.

1. King Street Rehab is not authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED], 2025.
2. King Street Rehab will readmit the Appellant to its first available semi-private bed, prior to admitting any other person, pursuant to 10 NYCRR 415.3(i)(2)(i)(d).
3. 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
September 22, 2025


Shelby L. Foster
Administrative Law Judge

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Email: nsummo@garfunkelwild.com

c/o [REDACTED] Guardian of Person
[REDACTED]

Email: [REDACTED]

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