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Department of Health

KATHY HOCHUL
Governor

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Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

August 13, 2025

CERTIFIED MAIL/RETURN RECEIPT

Erica Schwartz, DSW
Beth Abraham Nursing and Rehabilitation Center
612 Allerton Road
Bronx, New York 10467

██████████
C/O Beth Abraham Nursing and Rehabilitation Center
612 Allerton Road
Bronx, New York 10467

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,

COPY

from a determination by

DECISION

Beth Abraham Nursing and Rehabilitation Center
Respondent,

to discharge him from a residential health care facility.

Hearing Before:

Jean T. Carney
Administrative Law Judge

Held via:

Cisco WebEx videoconference

Hearing Date:

July 29, 2025

Parties:

██████████ Appellant, *Pro se*

Beth Abraham Nursing and Rehabilitation Center

By: Erica Schwartz, Director Social Work
eschwartz@bethabrahamcenter.net

JURISDICTION

Beth Abraham Nursing and Rehabilitation Center (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 2-6); and the testimony of Arash Arvin, MD, Director of Quality Assurance; Jacqueline Turenne, Director of Rehabilitation Services; Sasha Duncan, RN, Nurse Manager; Jose Santos, Social Worker; and Aaron Stroock, Assistant Administrator. The Appellant testified in his own behalf. The Notice of Hearing with Discharge Notice was admitted into evidence as ALJ I. 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 male who was initially admitted to the Facility on [REDACTED] 2023, with a [REDACTED], for rehabilitation services. (Exh 3; T Dr. Arvin).
2. By notice dated [REDACTED] 2025, the Facility determined to discharge the Appellant on the grounds that his health has improved sufficiently so he no longer needs

the services provided by the facility; and that the safety of individuals in the facility would be endangered by the Appellant's repeated violations of the facility's smoking policies. The proposed discharge location is to the [REDACTED] Shelter, [REDACTED] NY [REDACTED] (Exh 2; T Ms. Selmon-Givan).

3. The Appellant was capable of ambulating [REDACTED] feet on even surfaces with a quad cane when he was discharged from physical therapy in [REDACTED] 2025. He could also ambulate on uneven surfaces and stairs with supervision. Currently, the Appellant primarily uses a wheelchair. The Appellant is independent with bed mobility and transfers. (T Ms. Turenne).

4. The Appellant is medically stable and can be safely discharged from the facility. He is independent in his activities of daily living (ADLs), is capable of administering his medications, and does not require skilled nursing services. (T Dr. Arvin and Ms. Duncan).

5. The Appellant was provided with the facility's smoking rules and signed the "Resident Smoking Safety Agreement/Contract" on [REDACTED] 2024. He admits that he used to smoke in his room; with his last infraction occurring on [REDACTED] 2025. (Exhs 4 and 5; T Mr. Caruso).

6. When the Appellant was admitted to the facility, the Social Worker asked him about potential discharge locations. At that time, the Appellant had no place to stay, nor was he interested in going to an assisted living facility (ALF). (T Mr. Santos 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; but has failed to show that 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 he no longer needs the services provided in the Facility. The Occupational Therapist's testimony establishes that the Appellant is independent in his ADLs and IADLs. The Physical Therapy Supervisor testified that the Appellant is independent in transfers, and ambulates with a rolling walker. His gait pattern is stable over level and uneven surfaces. The ADON testified that the Appellant can manage his medications independently, he makes his own appointments, and advocates for himself. Dr. Arora testified that the Appellant is medically stable and can manage his needs in the community. The Facility presented documentation from the Appellant's clinical record corroborating the treatment team's testimony that the Appellant's health has improved sufficiently so that he no longer needs the services provided by the Facility.

The Facility also alleges that the safety of individuals in the Facility is endangered by the Appellant smoking in his room, in violation of the Facility's smoking policy. The Appellant admits that he used to smoke in his room; but stopped "the day after I got yelled at." (T Appellant). The Appellant also testified that he had an [REDACTED], and staff never offered him any other counseling or cessation alternatives. (T appellant). The most recent documentation presented by the Facility relative to this allegation was a progress note from [REDACTED], 2025. (Exh 4). Smoking inside a facility is a serious safety issue; but the evidence presented by the Facility does not demonstrate that the violation continued after [REDACTED]. The Facility has not established that the safety of individuals in the facility is endangered.

Finally, the Facility failed to meet its burden in demonstrating that the discharge location is appropriate. Shelters are considered a discharge location of last resort, and the facility must explore other options before determining to discharge a resident to the shelter. The Appellant told the Facility upon his admission in 2023 that he did not have a place to live in the community and was not interested in going to an ALF. However, the Facility presented no evidence that it made any meaningful effort to revisit the possibility of discharge to an ALF or any discharge location other than the shelter. The evidence fails to establish that the Facility has worked with the Appellant to explore other discharge locations.

ORDER

Beth Abraham Nursing and Rehabilitation Center has established that its determination to discharge the Appellant based on his health having improved such that he no longer needs the services provided by the facility; but has not established that the safety of individuals in the facility is endangered, or that the discharge location is appropriate.

1. The Facility is not 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: August 13, 2025
Albany, New York


JEAN T. CARNEY
Administrative Law Judge

TO: Erica Schwartz, DSW
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