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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, MD, MPH
Commissioner

JOHANNE E. MORNE, MS
Executive Deputy Commissioner

September 9, 2025

CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]
c/o Ocean Gardens Care Center
64-11 Beach Channel Drive
Averne, New York 11692

Nechama Reichmann, Administrator
Ocean Gardens Care Center
64-11 Beach Channel Drive
Averne, New York 11692

Thomas White, Ombudsman
Center for Independence of the Disabled
Manhattan Office
1010 Avenue of Americas, Suite 301
New York, New York 10018

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

[REDACTED] Appellant,

from a determination by

Ocean Gardens Care Center,

Respondent,

to discharge him from a residential
health care facility.

COPY

DECISION
AFTER
HEARING

Hearing before:

Kathleen Dix
Administrative Law Judge
September 5, 2025
By WebEx Videoconference

Parties:

Ocean Gardens Care Center
64-11 Beach Channel Drive
Averne, New York 11692

By: Nechama (Nicole) Reichmann, Administrator

[REDACTED]
c/o Ocean Gardens Care Center
64-11 Beach Channel Drive
Averne, New York 11692

JURISDICTION

By notice dated [REDACTED], 2025, Ocean Gardens Care Center, (Respondent), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge [REDACTED] (Appellant) from care and treatment in its facility. The Appellant requested a hearing pursuant to Department regulations at 10 NYCRR 415.3 and federal regulations at 42 CFR 483.15. The hearing was held on September 5, 2025, via Webex videoconference.

HEARING RECORD

ALJ Exhibits:

- I. Notice of Hearing and Notice of Discharge/Transfer

Facility's Exhibits:

- A. Resident Face Sheet
- B. Brief Interview of Mental Status (BIMS)
- C. Physician Progress Note [REDACTED]/25
- D. Shelter Conditional Approval
- E. Social Work Progress Note [REDACTED]/25
- F. Nursing Progress Note [REDACTED] 25

Appellant's Exhibits: None

Facility's Witnesses:

1. Ann Marie Coombs, Director of Nursing
2. Susan Sampson, Director of Social Work
3. Alicia Lemon, Former Director of Social Work
4. (Nechama) Nicole Reichmann, Administrator

Appellant's Witnesses: None

ISSUES

Has the facility established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

1. Respondent is a residential health care facility, specifically a nursing home within the meaning of PHL § 2801.2 and 10 NYCRR 415.2(k), located in Arverne, in the borough of Queens, New York.

2. The Appellant is a [REDACTED]-year-old male who was first admitted to the Respondent's facility on [REDACTED], 2019 and has diagnoses which include [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Exhibit A.)

3. By notice dated [REDACTED] 2025, the Respondent advised the Appellant of its determination to discharge him on [REDACTED], 2025, on the grounds that the safety of individuals in the facility would otherwise be endangered. The notice alleged that the Appellant "has threatened to [REDACTED] (sic)" and that he is "alert and oriented x3" and is able to make his needs known and care for himself. (ALJ Exhibit I.)

4. The discharge notice advised the Appellant he would be discharged to the [REDACTED] Shelter, [REDACTED] New York, [REDACTED] (ALJ Exhibit I.)

5. The Appellant appealed the discharge, and he remains at the Respondent's 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; 10 NYCRR 415.2(k). Transfer and discharge rights of nursing home residents have been codified in PHL § 2803-z and set forth at 10 NYCRR 415.3(i) which provides, in pertinent part, that the facility shall:

(1) (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:

...

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

...

(vi) 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, and provide a discharge summary pursuant to section 415.11(d) of this Title. . .

When alleging that a transfer or discharge is appropriate because the safety of individuals in the facility is endangered, the necessity of the transfer or discharge must be documented in the resident's medical record by a physician. 10 NYCRR 415.3(i)(l)(ii)(b) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(B).

The Respondent has the burden of proving that the discharge is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

The Respondent, in seeking to discharge the Appellant, asserts that the Appellant's actions in threatening to [REDACTED] on [REDACTED] 2025, has endangered the health and safety of other individuals in the facility. (ALJ Exhibit I; Exhibit E.) A Respondent physician's progress note dated [REDACTED], 2025 notes the Appellant was seen and examined that date, that the Appellant is "aware of his altercation with another resident" and had explained his side of the story to the physician, and that the physician had discussed the same with Respondent's staff. The note states that the Appellant is medically stable and no longer in need of skilled services of long term care, is medically stable for independent living, and may be discharged to a shelter. (Exhibit C.)

Alicia Lemon, the Respondent's former Director of Social Work, testified that following a [REDACTED] incident (on [REDACTED] 2025) the care plan team along with the physician discussed steps "moving forward" for the Appellant and the Appellant was given a discharge notice "secondary" to his [REDACTED]; that the

¹ There is no allegation that there was any [REDACTED] the Appellant [REDACTED]; [REDACTED] only.

safety of individuals at the facility would be endangered if the Appellant continues to stay there. (Recording @ 11:52, 12:47.) Ms. Lemon testified that the Appellant was referred to the shelter and was accepted. (Recording @ 14:17.) Ms. Lemon also stated that prior to this incident there had been no discussion regarding discharging the Appellant. (Recording @ 15:07.) Ms. Lemon testified that facility staff, including herself, tried to discuss discharge planning with the Appellant but he refused to speak with them; the nursing staff did review the Appellant's medication with him several times, will continue to do so, and he will be taught how to [REDACTED] (Recording @ 31:23, 50:30, 52:02, 55:57.)

The Appellant testified that he has resided at the Respondent's facility for two years, has no other place to stay, takes medications for [REDACTED] that the Respondent's staff give him once in the morning and once in the evening, that he has ongoing [REDACTED] and has his [REDACTED] tested once a month by the Respondent's staff. (Recording @ 16:16-17:01.) The Appellant denied wandering but stated that he previously wore a wander guard before the facility removed it. The Appellant denied having [REDACTED] [REDACTED]. (Recording @ 18:36, 19:01, 22:26, 22:53, 24:02, 30:01.) The Appellant stated that he had been at the facility for two and one half years and did not know where these diagnoses were "now" coming from. (Recording @ 23:26.) The Appellant testified that he sees a doctor monthly and is concerned about how he will follow up on his medical conditions if he is discharged to a shelter. (Recording @ 24:48-25:25, 53:40, et. seq.) The Appellant denied having had any discharge planning or discussing medical and medication management with facility staff. (Recording at 24:02, et. seq., 27:19.)

The Appellant testified that one week prior to the incident in question he was asked by Ms. Lemon to move from the [REDACTED] floor to the [REDACTED] floor, but he declined stating he had been there two years. because, over the course of the two years that he was a resident, he had never been asked to move before. (Recording @ 20:19, 25:38².) The Appellant described the incident that occurred on [REDACTED] as follows: He was [REDACTED]

² At this point in the hearing the Appellant stated that he had been there two and one-half years; while previously stating he had been there two years.

██████████ While doing so, ██████████ the Appellant to ██████████ but did not want to give the Appellant ██████████ the Appellant ██████████ There was no nursing staff present at the time of the incident but it was recorded on camera. (Recording @ 20:45 – 22:15, 46:03.)

There is a framework for a residential health care facility to follow prior to the discharge of a resident. The Appellant's conduct must be linked to a regulatory reason for discharge. Before the Respondent seeks to discharge the Appellant because the safety and health of individuals in the facility is endangered, the necessity of the transfer or discharge must be recorded in the resident's clinical record by a physician. 10 NYCRR 415.3(i)(1)(ii)(b) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(B). In a Respondent progress note dated ██████████, 2025, the Respondent's physician noted that the Appellant was seen and examined the previous day, that the Appellant is aware of the altercation with another resident, had explained his side of the story, and that the doctor had discussed the issue with the staff. The doctor opined that the Appellant is medically stable for independent living, is no longer in need of skilled services of a long-term care facility; and may be discharged to a shelter. (Exhibit C.) However, the physician did not document the events of the ██████████ incident, and/or how those events have made the Appellant a danger to the safety of others. Thus, the connection between the Appellant's conduct and a regulatory reason for discharge is not supported by the medical evidence. Further, though the doctor states that the Appellant is medically stable for independent living, that opinion is belied by the Appellant's own testimony which failed to recognize his own diagnoses of ██████████, calling into question his ability to safely manage his medication and/or medical care. In addition, the Appellant seemingly was unaware that he has been at the facility for over five and one-half years, instead testifying that that he has been there only between two and two and one-half years, again calling into question his ability to safely live independently.

The Respondent has not established a valid ground for discharge of the Appellant. Finding no valid ground for discharge, the issue of the appropriateness of the discharge plan need not be addressed.

DECISION

The Respondent has failed to establish that the discharge of the Appellant is necessary.

1. Ocean Gardens Care Center 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
September 9, 2025


Kathleen Dix
Administrative Law Judge

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