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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

September 23, 2025

CERTIFIED MAIL/RETURN RECEIPT

[redacted]
c/o Elmhurst Hospital
79-01 Broadway
Elmhurst, New York 11373

Anna Hock, Esq.
Barker Patterson Nichols, LLP
300 Garden City Plaza, Suite 100
Garden City, New York 11530

Joseph Iannotto, SW
Elmhurst Hospital
79-01 Broadway
Elmhurst, New York 11373

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

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: cmg
Enclosure

STATE OF NEW YORK: DEPARTMENT OF HEALTH

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

[redacted]

Appellant,

DECISION

from a determination by Ocean Gardens Care Center

Respondent,

to discharge him from a residential health care facility

Hearing Before: Jean T. Carney
Administrative Law Judge (ALJ)

Held Via: Cisco WebEx videoconference

Hearing Date: September 16, 2025

Parties: Ocean Gardens Care Center, Respondent
By: Nicole Reichmann, Administrator
nreichmann@oceangardenscare.com

[redacted] Appellant
By: Anna Hock, Esq.
a.hock@bpn.law

JURISDICTION

Ocean Gardens Care Center (Respondent or facility), a residential healthcare facility subject to Article 28 of the Public Health Law, transferred [redacted] (Appellant or resident) from its nursing home to an acute care hospital and refuses to readmit him. The Appellant appealed the discharge to the New York State Department of Health pursuant to 10 NYCRR 415.3(i). The Respondent has the burden of proving that the discharge is necessary and the discharge plan is appropriate.

HEARING RECORD

In support of its determination, the Respondent presented documents (Exhibits 1-3); the testimonies of Ann Marie Coombs, Director of Nursing (DON); and Mary Ellen Finneran, Registered Nurse (RN). The Appellant presented documents (Exhibits A1, A2, D-G and I); the testimonies of Kosuke Ken Iwaki, MD; Fernando Sterling, Esq.; and Joseph Iannotto, Master in Social Work (MSW), Social Work Supervisor at Elmhurst Hospital. Also present were Susan Sampson, Respondent's Director of Support Services; and Gina Abenante, Social Work Supervisor at Elmhurst Hospital. The Notice of Hearing with Discharge Notice and the resident's face sheet were admitted as ALJ Exhibits I and II respectively. The hearing was digitally recorded and made part of the record.

ISSUES

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

FINDINGS OF FACT

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. Any conflicting

evidence was considered and rejected in favor of the cited evidence. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The resident is a [redacted]-year-old male who was admitted to the Respondent facility on [redacted] 2023, with relevant diagnoses of [redacted]. (Exh ALJ II; T RN Finneran).

2. On [redacted] 2025, the Appellant was involved in an altercation with another resident. The Respondent transferred the Appellant to [redacted] hospital for evaluation, after which the Appellant was transported to [redacted] County Court and arraigned on a charge of [redacted] and released on his own recognizance. The Court also issued a Temporary Order of Protection (TOP) ordering the Appellant to stay away from the other resident, except for incidental contact. (Penal Code § 120.00; Resident Exhs F and G; T Ms. Combs and Mr. Sterling).

3. After the court appearance, the Appellant's [redacted] brought him back to the Respondent facility and requested that they send the Appellant to Elmhurst Hospital for further evaluation of his [redacted] which had been injured in the altercation. The Respondent arranged for transportation to Elmhurst Hospital. (Facility Exh 3; Resident Exh A1; T Coombs).

4. Upon his arrival at Elmhurst Hospital on [redacted] 2025, the Appellant was assessed and diagnosed with a [redacted]. The Appellant was cleared for discharge to the Respondent at approximately 2:00 am on [redacted], 2025. At 2:36 am on [redacted], 2025, the hospital contacted Respondent to arrange for his return, and was informed that the facility could not accept the Appellant for transfer until the morning. At 6:07 am on [redacted], 2025, the hospital contacted the Respondent again, and was

informed that the Appellant could not be returned to the Respondent facility because of the TOP. (Exh A1).

5. On or after [redacted], 2025, the Respondent issued a Discharge Notice (Notice) purporting to discharge the Appellant to his [redacted] on [redacted], 2025, on the grounds that the safety of individuals in the facility would be endangered. The Notice was provided as part of this proceeding; but was not given to either the Appellant or his [redacted] (ALJ I; T MSW Iannotto).

APPLICABLE LAW

A residential health care facility, also referred to as a nursing home, is a facility which 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 of 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.

Before transferring or discharging a resident, the facility must notify the resident of the transfer or discharge, and record the reasons in the clinical record. (10 NYCRR § 415.3[i][1][iii]). The written notice must include the reason for the transfer or discharge, the specific regulations that support the action, the effective date of the transfer and the location to which the resident will be discharged. (10 NYCRR § 415.3[i][1][v]).

The burden is on the Respondent 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 Respondent has failed to comply with the notice requirements of New York State law by issuing the discharge notice after the Appellant was transferred to the hospital. Before a facility transfers or discharges a resident, it must notify the resident and designated representative, if any, in writing, of the transfer or discharge and the reasons for the move. (10 NYCRR § 415.3[i]). Here, the Respondent issued the Notice on or after [redacted] 2025, after transferring the Appellant to the hospital and after the

hospital cleared the Appellant to return to the Respondent facility. In addition, there was no evidence presented at the hearing to support the Respondent's assertion that the Appellant and his [redacted] were served with the Notice. To the contrary, the evidence shows that the Notice was not disclosed until after this hearing was requested. Finally, when a facility determines to discharge a resident while the resident is hospitalized, the facility must send a copy of the discharge notice to the State Long Term Care Ombudsman. (DAL-NH 19-07, re-issued October 11, 2022). The Respondent failed to comply with that requirement. The Respondent's multiple failures in issuing the Notice renders it defective on its face.

The Respondent failed to show that the discharge is necessary. The Notice alleges that the Appellant's discharge is necessary because the safety of individuals in the facility is endangered due to the TOP. When alleging a resident's discharge is necessary due to endangering the safety of others, the facility must show complete documentation in the resident's medical record detailing factual support for the allegation. (10 NYCRR § 415.3[i][1][iii]). The Respondent failed to submit any documentation from the Appellant's medical record. In addition, the TOP provides for incidental contact between the Appellant and other resident. The purpose of an incidental contact provision is to prevent an individual from becoming homeless. (T Mr. Sterling). Here, the facility has several different floors, and is sufficiently large to ensure compliance with the TOP. Therefore, the TOP does not present a bar to the Respondent re-admitting the Appellant. Finally, the Respondent claims that the Appellant's behavioral issues place other residents at risk of harm. Dr. Iwaki testified that the Appellant exhibited no aggressive behaviors and has been compliant with his treatment providers while at the hospital. RN Finneran testified that it is common for persons suffering from [redacted] to develop [redacted] as a normal course of the [redacted] The Respondent was aware of the Appellant's [redacted] diagnosis when it agreed to admit him in 2023; and should

have been prepared to meet his changing needs as the [redacted]. The Respondent cannot now claim that these behavioral disturbances necessitate the Appellant's discharge.

The Respondent failed to present an appropriate discharge plan. 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 Notice states that the Appellant will be discharged to his [redacted] However, the testimony and medical records provided by Elmhurst hospital establishes that the Appellant requires skilled nursing care. The Appellant's [redacted] was not consulted prior to the Notice being issued, and told Mr. Iannotto that she cannot adequately care for the Appellant. In support of its determination, the Respondent asserts that the Appellant was discharged to his [redacted] custody by the criminal court after the arraignment. This does not mean that the Respondent's determination to discharge the Appellant to his [redacted] constitutes an appropriate discharge plan. The Respondent's discharge plan fails to address the Appellant's medical needs and how they will be met after his discharge.

Clearly, the Respondent's discharge plan was an attempt to disguise the fact that it refuses to readmit the Appellant. It is well settled that a hospital is not an appropriate discharge location. (DAL-NH 19-07; DAL-NH 25-01). The Emergency Department medically cleared the Appellant to return to the Respondent facility after being treated for a [redacted]. The only reason the Appellant was admitted to the hospital was because the Respondent refused to transport him back. The Respondent must re-admit the Appellant.

ORDER

Ocean Gardens Care Center has failed to establish that the Appellant's discharge is necessary, and that the discharge plan was appropriate.

1. Pursuant to 10 NYCRR § 415.3(i)(2)(i)(d), the Respondent is Ordered to re-admit the Resident to the first available semi-private bed.

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: **Albany, New York**
September 23, 2025

JEAN T. CARNEY
Administrative Law Judge

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