

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan  
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## Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**LISA J. PINO, M.A., J.D.**  
Executive Deputy Commissioner

August 13, 2020

### CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]  
c/o Massapequa Center for Rehabilitation  
and Nursing  
101 Louden Avenue  
Amityville, New York 11701

Mr. John Mackay, LCSW  
Director of Social Work  
Massapequa Center for Rehabilitation  
and Nursing  
101 Louden Avenue  
Amityville, New York 11701

Ms. Gail Jeby, Ombudsman  
Family Services League  
55 Horizon Drive  
Huntington, New York 11743

[REDACTED]

**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,

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cmg  
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

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

██████████ ██████████

Appellant, :

from a determination by :  
MASSAPEQUA CENTER FOR REHABILITATION :  
AND NURSING :  
:

COPY

DECISION

Respondent, :

to discharge him from a residential health :  
care facility. :  
-----X

Hearing Before: Sean D. O'Brien  
Administrative Law Judge

Held via WEB EX

Hearing Date: August 6, 2020

Parties: Massapequa Center for Rehabilitation and Nursing

By: Mr. John Mackay, LCSW  
Director of Social Work

██████████ ██████████  
Pro Se

JURISDICTION

By notice dated [REDACTED] [REDACTED], 2020, the Massapequa Center for Rehabilitation and Nursing (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) Section 415.3(i).

HEARING RECORD

Facility Exhibits: 1-6

Facility Witnesses: John Mackay, LCSW, Director of Social Work  
Issac Otsieku-Baah, RN, Asst. Director  
Raja Khan, Director of Physical Therapy  
Vinod Gulati, MD, Medical Director

Appellant's Witnesses: [REDACTED] Appellant's [REDACTED]

Present: Gail Jeby, Ombudsman

Administrative Law Judge Exhibit 1: Notice of Hearing with Discharge Notice.

A digital recording of the hearing was made part of the hearing record via WEB EX.

ISSUE

Has the Facility established that the determination to transfer/discharge is correct and the discharge plan for the Appellant is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (T.) of witnesses and exhibits (Exhibit) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED], 2018, with a diagnosis of [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. (Exhibits 2, 4, 5; T. Mackay 11:58, T. Gulati 19:05).

2. By notice dated [REDACTED], 2020, the Facility determined to discharge the Appellant on [REDACTED] 2020, because his "...health has improved sufficiently..." so that he no longer needs the services of a skilled nursing facility. (Exhibits 1, 3, 4, 6; T. Mackay 13:10, T. Gulati 21:07, T. Khan 26:00 T. Otsieku-Baah 31:43).



8. The Appellant refuses to reside in an assisted living location because he claims he still needs nursing home care and wants to stay in the Facility. (Exhibits 1, 4; T. Mackay 14:03, T. [REDACTED] [REDACTED] 1:10).

9. It is the professional opinion of the Appellant's caregivers at the Facility, including the Facility's Medical Director, the Facility's Director of Social Work, Assistant Nursing Director and the Facility's Rehabilitation team, that discharge to [REDACTED] is appropriate. (Exhibits 1, 3, 4, 6; T. Gulati 23:56, T. Mackay 13:10, T. Khan 28:21, T. Otsieku-Baah 36:08).

10. [REDACTED] [REDACTED] [REDACTED], the designated discharge location, as of the dates of the Discharge Notice and Hearing had not accepted the Appellant. (T. [REDACTED] [REDACTED] 47:28, T. Mackay 58:41).

11. The Appellant remains at the Facility pending the outcome of the appeal.

APPLICABLE LAW

A residential health care facility (also referred to in the Department of Health Rules and Regulations 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 Sections 2801(2)(3); 10 NYCRR Section 415.2(k).

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR Section 415.3[i][1]).

The Facility alleges the Appellant's discharge is permissible pursuant to 10 NYCRR Section 415(i)(1)(i)(a)(2), which states in relevant part:

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.

Under the hearing procedures at 10 NYCRR Section §415.3(i)(2)(ii), the Facility bears the burden to prove a discharge necessary and the discharge plan is appropriate. Under the New York State Administrative Procedures Act (SAPA) Section 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. 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 (3<sup>rd</sup> Dept. 1984), appeal dismissed 63 N.Y.2d 649.

#### DISCUSSION

The Appellant was admitted to the Facility on [REDACTED], 2018, for short-term rehabilitation. His medical conditions include [REDACTED] and [REDACTED]. At the time of his admission to the Facility, the Appellant required assistance with the ADLs of ambulating, transferring and showering. (Exhibits 1, 2; T. Khan 25:00, T. Gulati 19:05, T. Otsieku-Baah 31:43).

By [REDACTED], 2020, however, the Appellant had made sufficient improvements in all ADLs areas and had no need for skilled nursing care at the Facility. (Exhibits 1, 2; T. Mackay 13:45).

Mr. John Mackay, the Director of Social Work at the Facility testified the Appellant at first was favorable to the discharge plan to [REDACTED] [REDACTED] [REDACTED], but after being told he was provisionally accepted at [REDACTED] [REDACTED] [REDACTED] the Appellant replied that he did not want to go because the Appellant believes he still needs nursing home care. In addition, the Appellant

refused to cooperate in the final discharge planning to [REDACTED]  
[REDACTED]. (Exhibits 1, 4; T. Mackay 14:03).

Ms. Raja Khan, the Facility's Director of Physical Therapy and Mr. Issac Otsieku-Baah, the Facility's Assistant Director of Nursing, both testified the Appellant is independent in all of his ADLs. They further testified the Appellant has met all of his physical therapy benchmarks. In addition, the Appellant is capable of using his roller walker unsupervised and regularly ambulates throughout the Facility. (Exhibits 2, 3; T. Khan 25:50, T. Otsieku-Baah 36:08).

Importantly, Dr. Vinod Gulati who is the Medical Director at the Facility and the Appellant's attending physician testified the Appellant does not require nursing home placement and can be discharged to an assisted living location. Dr. Gulati is fully familiar with the Appellant's medical conditions and Dr. Gulati further testified the Appellant does not require the level of medical care of a nursing home. (T. Gulati 21:55 23:56). The Appellant testified on his own behalf claiming [REDACTED] and he is not ready for discharge, but the Appellant did not provide any medical proof to support his position. (T [REDACTED] [REDACTED] 1:06 1:10). Therefore, the Facility has met its burden of establishing

valid grounds the discharge of the Appellant is necessary because the Appellant no longer needs nursing home care. 10 NYCRR Section 415.3(i)(1)(i)(b).

The discharge plan to [REDACTED] is appropriate if it can be implemented. The discharge plan addresses the medical needs and personal care needs of the Appellant post discharge. 10 NYCRR Section 415.3(i)(1)(vi).

The Facility provided the Appellant with education regarding his medications. In addition, the discharge location has nursing staff to assist the Appellant in his medications as necessary. As part of his discharge plan, the Appellant is being provided necessary medical referrals and the durable medical equipment of a roller walker. (Exhibits 1, 4; T. Otsieku-Baah 35:55, T. Khan 26:23).

The Facility has adequately planned for the Appellant's discharge. In addition, the Facility afforded the Appellant the opportunity to participate in his discharge plan, but the Appellant failed to cooperate with the Facility after being provided numerous opportunities. (T. Mackay 14:03, 58:00, T. [REDACTED] [REDACTED] 44:50) The Facility actions sufficiently address

the medical needs of the Appellant post discharge. 10 NYCRR Section 415.3(i)(1)(vi).

However, [REDACTED] as of the dates of the Discharge Notice and Hearing had not accepted the Appellant. A discharge plan is only appropriate if it can be actually implemented. In addition, the Facility failed to adequately work with Mr. [REDACTED] [REDACTED] the Appellant's [REDACTED] and Designated Representative, in the development of the Appellant's discharge location and plan. 10 NYCRR 415.11(d)3. The statement of Mr. [REDACTED] [REDACTED] and the testimony of Mr. Mackay are clear the Facility did not engage Mr. [REDACTED] [REDACTED] regarding the discharge location of [REDACTED] until after the Facility had already selected [REDACTED]. (T. [REDACTED] [REDACTED] 44:10, T. Mackay 58:00).

It is not clear [REDACTED] will accept the Appellant. Should [REDACTED] not accept the Appellant the Facility is not authorized to discharge the Appellant. The Facility will be required to develop a new discharge plan with appropriate input from the Appellant's family.

CONCLUSION

The Massapequa Center for Rehabilitation and Nursing has proven that its determination to discharge the Appellant is correct and the discharge plan is appropriate pending formal acceptance of the Appellant by [REDACTED].

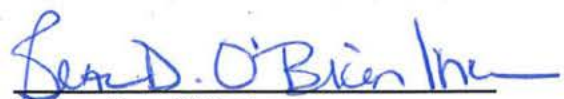
DECISION

The appeal by Appellant is therefore DENIED regarding the basis for discharge and AFFIRMED, IN PART, regarding the discharge plan.

The Facility is not authorized to discharge Appellant in accordance with the [REDACTED] 2020, Discharge Notice until [REDACTED] [REDACTED] formally accepts the Appellant.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

DATED: Albany, New York  
August 13, 2020

  
Sean D. O'Brien  
Administrative Law Judge

To:

■ ■ ■ ■ ■

c/o Massapequa Center for Rehabilitation and Nursing  
101 Louden Avenue  
Amityville, New York 11701

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