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# Department of Health

KATHY HOCHUL  
Governor

MARY T. BASSETT, M.D., M.P.H.  
Acting Commissioner

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

January 4, 2022

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Brooklyn-Queens Nursing Home  
2749 Linden Boulevard  
Brooklyn, New York 11208

Joshua Rosenberg, Administrator  
Brooklyn-Queens Nursing Home  
2749 Linden Boulevard  
Brooklyn, New York 11208

**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,

*Dawn MacKillop-Soller*

Dawn MacKillop-Soller  
Acting Chief Administrative Law Judge  
Bureau of Adjudication

DXM: 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

BROOKLYN-QUEENS  
NURSING HOME

Respondent,

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

COPY

DECISION

Hearing Before:

Sean D. O'Brien  
Administrative Law Judge

Held via WEB EX

Hearing Date:

December 29, 2021

Parties:

Brooklyn-Queens Nursing Home  
2749 Linden Blvd  
Brooklyn, New York 11208  
By: Joshua Rosenberg, Administrator

██████████ ██████████  
Pro Se

JURISDICTION

By notice dated [REDACTED] 2021, the Brooklyn-Queens Rehab and Nursing Home, (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: Angela Singh, Director of Social Service  
Sheryl Molina, Director of Rehabilitation

Appellant's Witness: [REDACTED] [REDACTED]

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] 2021, for a short-term rehabilitation following a fall. (Exhibits 2, 4, 5, 6; T. Molina 17:40, T. Singh 30:36, 31:53).

2. By notice dated [REDACTED] [REDACTED] 2021, the Facility determined to discharge the Appellant on [REDACTED] [REDACTED] 2022, because his "...health has improved sufficiently..." so that he no longer needs the services of a skilled nursing facility. (Exhibit 1).

3. The Facility determined to discharge the Appellant to the [REDACTED] shelter system at the [REDACTED] Shelter, [REDACTED], where he has been accepted. (Exhibits 1, 5; T. Singh 28:20, 35:58).

4. At the time of his admission to the Facility, the Appellant needed assistance in all of his Activities of Daily Living (ADLs) including ambulating, transferring, and bathing. The goal of Appellant's short-term admission was to return the Appellant to the community. (Exhibits 2, 3, 4, 5; T. Molina 12:00, 28:40, 36:25).

5. The Appellant has completed his short-term rehabilitation to the point where he no longer needs skilled nursing care, nor does he need assistance with his ADLs. (Exhibits 3, 4, 5, 6; T. Molina 15:17, 22:50).

6. The Appellant can take his own medications, self-direct and is capable of making his own medical appointments. (Exhibits 3, 4, 5; T. Singh 38:00).

7. The Appellant can ambulate [REDACTED] feet independently with [REDACTED] using a roller walker. (Exhibits 2, 3, 4, 5, 6; T. Molina 15:17).

8. The Appellant was referred to the [REDACTED] Shelter system where he has lived previously. The Appellant does not have any income and is not eligible for an adult home stay or an assisted living location. The [REDACTED] [REDACTED] program was referenced, but it is not available to the Appellant. (Exhibit 5; T. Singh 34:06).

9. It is the professional opinion of the Appellant's caregivers at the Facility, including the Appellant's treating physician, the Director of Social Work and the Facility's Director of Rehabilitation that discharge to the [REDACTED] Shelter system is appropriate. (Exhibits 2, 3, 4, 5, 6; T. Singh 28:00, T. Molina 22: 50).

10. The Appellant remains at the Facility pending the outcome of this 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], 2021, for short-term rehabilitation. His medical conditions include [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. At the time of his admission to the Facility, the Appellant required assistance with the ADLs of ambulating, transferring, and bathing. (Exhibits 2, 3, 4, 5; T. Molina 12:34).

By [REDACTED] [REDACTED] 2021, the Appellant had made sufficient improvements in all ADL areas and had no need for continued skilled nursing care at the facility. The Facility's Director of Rehabilitation, Sheryl Molina, testified that the Appellant has hit all the benchmarks for his physical and occupational therapy. Director Molina further testified the Appellant ambulates independently using a roller walker with [REDACTED]. (Exhibits 2, 3, 4, 5; T. Molina 12:17, 15:17 22:50).

The Facility's Director of Social Service, Angela Singh, testified that the Appellant is being discharged back to the community and to the [REDACTED] shelter system program where

the Appellant lived previously. (Exhibits 2, 4, 5, 6; T. Singh 28:00).

Importantly, Dr. Georges Ramalanjaona, the Appellant's treating physician wrote in his discharge report the Appellant does not require nursing home placement and can be discharged to the [REDACTED] shelter system. (Exhibit 6). The Appellant testified on his own behalf and made it known that he does not want to be discharged because he claims that he is not ready with his ADLs. He did not, however, provide any medical justification to support his position that he must remain in the Facility. Therefore, the Facility has met its burden of establishing valid grounds that the discharge of the Appellant is necessary because the Appellant no longer needs the services of a residential care facility. 10 NYCRR Section 415.3(i)(1)(i)(b).

The discharge plan to the community and to the [REDACTED] shelter system, in particular, is appropriate. The Appellant does not have any family or friends as a housing resource. In addition, the Appellant does not have any income and is not eligible for discharge to an assisted living location or an adult home due to his lack of income and the [REDACTED] program does not have readily available housing. (T. Singh 28:16, 33:55, 34:30).

The Appellant, however, is able to make medical appointments outside of the Facility and is alert, oriented and can ambulate independently. (Exhibits 3, 4, 5, 6; T. Singh 38:00). Also, the Appellant resided in the [REDACTED] shelter system prior to his admission to the hospital and to the Facility. (Exhibits 5, 6; T. Singh 28:00, 31:53, 35:58).

The discharge plan addresses the medical needs and personal care needs of the Appellant post discharge. The Appellant has been formally accepted by the discharge location. 10 NYCRR Section 415.3(i)(1)(vi).

At the [REDACTED] shelter a social worker will be assigned to the Appellant to assist him regarding housing, meals, and medications. The Appellant has a roller walker and a wheelchair as durable medical equipment. In addition, the Appellant's scripts and necessary medical referrals will be made. The health care the Appellant may still need can be provided on an outpatient basis and does not require the services of a residential care facility. (Exhibits 2, 3, 4, 5, 6; T. Molina 22:42, T. Singh 29:33, 37:04, 38:26).

The Facility has adequately planned for the Appellant's discharge. The Facility actions sufficiently address the medical

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

CONCLUSION

The Brooklyn-Queens Nursing Home has proven that its determination to discharge the Appellant is correct and the discharge plan is appropriate.

DECISION

The appeal by Appellant is therefore DENIED.

The Facility is authorized to discharge the Appellant on [REDACTED] 2022, in accordance with the Facility's [REDACTED] 2021, Discharge Notice.

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  
January 4, 2022

  
Sean D. O'Brien  
Administrative Law Judge

To:

██████ ██████  
c/o Brooklyn-Queens Nursing Home  
2749 Linden Boulevard  
Brooklyn, New York 11208

Joshua Rosenberg, Administrator  
Brooklyn-Queens Nursing Home  
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