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# Department of Health

KATHY HOCHUL  
Governor

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

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

June 22, 2022

## CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
c/o Suffolk Center of Rehabilitation & Nursing  
25 Schoenfeld Boulevard  
Patchogue, New York 11772

Deidre Daniels, DSW  
Suffolk Center of Rehabilitation & Nursing  
25 Schoenfeld Boulevard  
Patchogue, New York 11772

██████████ ██████████  
(BY EMAIL ONLY)

**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  
Acting Chief Administrative Law Judge  
Bureau of Adjudication

DXM: cmg  
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

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

██████████ ██████████ :

Appellant, :

from a determination by :

**Suffolk Center of Rehabilitation & Nursing,** :

Respondent, :

to discharge her from a residential health care facility. :

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**DECISION**

**Hearing Before:**

Ann Gayle  
Administrative Law Judge

**Held:**

Via Cisco Webex

**Hearing Dates:**

May 19, June 16, and June 21, 2022

**Parties:**

Suffolk Center of Rehabilitation & Nursing  
By: Deidre Daniels, Social Work Director

██████████ ██████████

*Pro Se* – May 19, 2022

No Appearance – June 16 and June 21, 2022

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as Suffolk Center of Rehabilitation & Nursing (“Respondent” or “Facility”) 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.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(i). Respondent determined to discharge ██████████ ██████████ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §§415.3(i)(1)(i)(a)(2) and 415.3(i)(1)(i)(b):

- (1) With regard to transfer or discharge of residents, the facility shall:
  - (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:
    - (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.

.....

(b) Transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third-party insurance) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid. Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the funds.

Appellant appealed the discharge determination to the New York State Department of Health and a hearing on that appeal was held. Pursuant to §415.3(i)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

A recording of the hearing was made part of the record. Appellant appeared at the first hearing date, May 19, 2022, but did not appear on June 16 or 21, 2022. ██████████ ██████████ Appellant's ██████████ was invited to the May 19, June 16, and June 21, 2022 hearings but did not appear at any hearing date. Doctor of Physical Therapy David Justus, Finance Office Manager Susan Raevisky, Unit Manager Genta Luis, LPN, and Social Work Director ("DSW") Deidre Daniels testified for Respondent.

The following documents were accepted into evidence by the Administrative Law Judge ("ALJ") as ALJ and Facility Exhibits:

ALJ:

- I: Notice of Hearing with attached Notice of Discharge/Transfer
- II: June 10, 2022 letter re June 16, 2022 hearing date
- III: June 16, 2022 letter re June 21, 2022, 1 p.m. hearing date
- IV: Email chain for dates June 3, 12:21 pm, May 23, 1:09 pm, May 23, 12:03 pm
- V: Email chain for dates June 6, 10:55 am, June 6, 6:36 am, June 1, 4:18 pm, May 23, 1:09 pm, May 23, 12:03 pm
- VI: Email chain for dates June 16, 2:55 pm, June 15, 11:11 am, June 15, 7:23 am, June 14, 1:25 pm
- VII: Email chain for dates "Final Reminder," June 21, 8:54 am, June 21, 9:38 am, June 21, 10:59 am

Facility:

- 1: Physical Therapy documents
- 2: Financial documents
- 3: MDS Cognitive Patterns
- 4: Power of Attorney

**ISSUE**

Has Suffolk Center of Rehabilitation & Nursing established that the discharge is necessary and the discharge plan is appropriate?





inability to join/attend was granted. Since Ms. ██████████ could not join the hearing even for a few minutes just to select a new hearing date that would be convenient for her, a conference call was scheduled for May 23 at 1 p.m. to select a hearing date and discuss the logistics of the hearing.

On the morning of May 23, Ms. ██████████ informed DSW Daniels that she would not be able to participate in the 1pm phone conference and requested rescheduling it for "another two weeks." Ms. ██████████ two-week extension was granted, and the parties were informed that the ALJ would hold Friday, Monday and Tuesday (June 3, 6, and 7) available for Ms. ██████████ to select her preferred time on any of those dates for the conference call. On June 1, 2022, the parties were reminded to inform the ALJ of the preferred date/time for the conference call. The parties were informed that "if Ms. ██████████ does not provide feedback for a June 3, 6, or 7 conference call, THE HEARING WILL BE HELD AT 1:00 PM ON THURSDAY, JUNE 16, 2022." (ALJ Exhibit IV).

On June 6, Ms. ██████████ wrote in an email that she could get to the Facility on June 16 or 17 to participate in person. Due to additional information contained in Ms. ██████████ June 6 email, the ALJ's office sent the parties an email reiterating the June 16 hearing date and added, "Your email reinforced that we need to have a CONFERENCE CALL prior to the hearing" and that the ALJ was still available for such conference call on June 6 or 7. (ALJ Exhibit V). Ms. ██████████ did not respond on June 6 or 7.

On June 15, the day before the June 16 hearing date, Ms. ██████████ who had previously represented that she could be present at the Facility on June 16 or 17, reported in an email that she could not be at the Facility on those dates; her daughter's graduation was June 16 and her ██████████ was June 17. Ms. ██████████ reported that she could be at the Facility on Tuesday, June 21 and preferred a time "after 12." The ALJ's office responded that the ALJ would like to



█████ Suffolk Center

have a conference call that afternoon to discuss Ms. █████'s adjournment request, asking Ms. █████ to select a time for the conference call, and informing the parties "If we do not have a conference call, the hearing will go forward tomorrow [June 16] as planned." (ALJ Exhibit VI). Ms. █████ did not respond on June 15.

An invitation for the June 16 hearing was sent to Ms. █████ and the Facility. Neither Appellant nor Ms. █████ appeared in person or on Webex for the June 16 hearing. Despite having informed the parties on June 15 that "If we do not have a conference call, the hearing will go forward tomorrow [June 16] as planned," the ALJ, over the Facility's objection, granted Ms. █████ adjournment request and scheduled the hearing for the date Ms. █████ represented she could be present at the Facility: Tuesday, June 21, 2022, at 12:30 pm. The parties were informed in a June 16 letter that the June 21 hearing date "**IS MARKED FINAL; THERE WILL BE NO FURTHER ADJOURNMENTS.**" (ALJ Exhibit III).

Ms. █████ sent another email on June 21. (ALJ Exhibit VII). Despite stating in her June 15 email that she would be at the Facility in-person on June 21, the June 21 email references that Ms. █████ would be going to work on June 21. Ms. █████ mentions someone who will represent Appellant at the hearing. The ALJ's office's request for the "representative's" email address so he/she could be invited to the Webex hearing was not answered. (ALJ VII). An invitation to the June 21 Webex hearing was sent to Ms. █████ and the Facility. Facility representatives appeared for the Webex hearing. Appellant and Ms. █████ did not. Ms. Daniels explained that the "representative" mentioned in Ms. █████ June 21 email is Suzanne Carter from the NYS Long Term Care Ombudsman's office ("Ombudsman"). The Ombudsman could not be present at the June 21 hearing as she just learned of this matter on June 20 when she was approached by Appellant when she (the Ombudsman) was at the Facility on June 20 for matters not related to

Appellant. Ms. Daniels testified that she showed Appellant the Ombudsman's information on the █ 2022 Notice of Transfer/Discharge ("Notice") when she gave it to Appellant on █ and that she explained to Appellant at that time that the Ombudsman could assist Appellant at the hearing if Appellant appealed the Notice. Appellant informed Ms. Daniels that she did not want the Ombudsman's assistance. Indeed, neither Appellant nor Ms. █ contacted the Ombudsman in the nearly three months since the Notice was given.

After giving Appellant and especially Ms. █ more than ample opportunity to participate in the selection of dates for the hearing and conference calls and to participate in same, the June 21, 2022 hearing, which was marked "FINAL; THERE WILL BE NO FURTHER ADJOURNMENTS" was held in Appellant's and Ms. █ absence.

The evidence presented by Respondent demonstrated that: Appellant has failed to pay for her stay at the Facility; she currently owes \$ █ she no longer requires or receives skilled care; she is independent and fully takes care of all her needs; her chronic and acute medical conditions can be treated in the community; she is capable of managing her health care needs including administering and managing her medications; she ambulates independently; and discharge to the █ Motel is an appropriate discharge plan for Appellant.

The █ Motel was identified as a last resort because Appellant refused to cooperate with █, two Assisted Living Facilities ("ALF") that sent representatives to the Facility to interview Appellant for potential discharge to their respective ALFs. Other ALFs where Appellant might have been interested in residing, █ and █, did not have beds available.

Prior to her admission to the Facility, Appellant resided in a motel. Respondent proved that discharge to the █ Motel is appropriate for Appellant. At the time of discharge,

prescriptions will be e-scribed to Rite Aid, and a medical appointment will be made at a nearby health center. While both Rite Aid and the health center are in close proximity to the ██████████ Motel so that Appellant can walk there, her prescription medications can be delivered, and Appellant can use her Medicaid-provided transportation to attend medical appointments. Appellant will have the option of travelling to a nearby shopping center to purchase groceries or have the groceries delivered.

Respondent must meet its burden of proving only one of its grounds for discharge. Respondent has proven that Appellant has failed, after reasonable and appropriate notice, to pay for her portion of her stay at the facility. Respondent has also proven that Appellant's health has improved sufficiently so she no longer needs the services provided by the facility, and that the ██████████ Motel which was identified as a last resort, is appropriate to meet Appellant's needs.

Ms. ██████████ indicated in her June 6 email (ALJ Exhibit V) that she would like Appellant to live near her. Appellant and Ms. ██████████ are strongly encouraged, with the Ombudsman's and/or Facility staff's assistance or independently, to make arrangements to apply, visit (virtually or otherwise) and follow through with assisted living and any other community housing options.

#### CONCLUSION

Respondent has proven that Appellant has failed to pay for her stay at the Facility; that Appellant's health has improved sufficiently that she no longer requires skilled care; and that discharge to the ██████████ Motel system is appropriate for Appellant at this time.

#### DECISION

I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

██████ / Suffolk Center

Respondent, Suffolk Center for Rehabilitation & Nursing, is authorized to discharge Appellant in accordance with the ████████ 2022 discharge notice. The discharge shall occur no sooner than ████████ 2022, in order to give the parties the opportunity to explore assisted living or other options. Appellant may leave the Facility sooner than ████████, 2022, if housing to her satisfaction is secured or for any reason she chooses to leave.

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: New York, New York  
June 22, 2022

*Ann Gayle*

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Ann Gayle  
Administrative Law Judge

TO: ████████ ████████  
c/o Suffolk Center of Rehabilitation & Nursing  
25 Schoenfeld Boulevard  
Patchogue, New York 11772

Deidre Daniels, DSW  
Suffolk Center of Rehabilitation & Nursing  
25 Schoenfeld Boulevard  
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██████ ████████ (by email only)