

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan  
SAPA File  
BOA by scan



# Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Acting Commissioner

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

April 18, 2023

## CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
c/o Beach Gardens Rehabilitation & Nursing  
1711 Brookhaven Avenue  
Far Rockaway, New York 11691

Gina Solomita, Administrator  
Beach Gardens Rehabilitation & Nursing  
1711 Brookhaven Avenue  
Far Rockaway, New York 11691

Barbara Phair, Esq.  
Abrams Fensterman, LLP  
3 Dakota Drive, Suite 300  
Lake Success, New York 11042

**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,

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

██████████ ██████████

Appellant,

from a determination by

**Beach Gardens Rehab &  
Nursing Center**

Respondent,

to discharge him from a residential  
health care facility.

COPY

**DECISION  
AFTER HEARING**

#DA23-5982

Hearing before: John Harris Terepka  
Administrative Law Judge

Held at: New York State Department of Health  
by videoconference  
April 17, 2023

Parties: Beach Gardens Rehab & Nursing Center  
17-11 Brookhaven Avenue  
Far Rockaway, New York 11691  
[gsolomita@bgrehabcare.com](mailto:gsolomita@bgrehabcare.com)

By: Barbara Stegun Phair, Esq.  
Abrams Fensterman, LLP  
3 Dakota Drive Suite 300  
Lake Success, New York 11042  
[BPhair@Abrainslaw.com](mailto:BPhair@Abrainslaw.com)

██████████ ██████████  
Beach Gardens Rehab & Nursing Center  
████████████████████████████████████████

### JURISDICTION

Beach Gardens Rehab & Nursing Center (the Respondent), a residential health care facility (RHCF) subject to Article 28 of the Public Health Law, determined to discharge [REDACTED] [REDACTED] (the Appellant) from care and treatment in its nursing home. The Appellant appealed the discharge determination to the New York State Department of Health pursuant to 10 NYCRR 415.3(i).

### SUMMARY OF FACTS

1. Respondent Beach Gardens Rehab & Nursing Center is a residential health care facility, specifically a nursing home within the meaning of PHL 2801.2, located in Far Rockaway, New York.
2. Appellant [REDACTED] [REDACTED] age [REDACTED] was admitted as a resident in [REDACTED] 2022 for short term rehabilitation after hospitalization with a [REDACTED].
3. By notice dated [REDACTED] 2023, the Respondent advised the Appellant of its determination to discharge him on [REDACTED], 2023 on the grounds that his health has improved sufficiently that he no longer needs the services provided by the facility. (Exhibit ALJ I.)
4. The Appellant is not in need of nursing home care. He is medically stable, independent with all care needs and activities of daily living and has been discharged from both occupational and physical therapy. His medical needs can be met on an outpatient basis. (Exhibits 1, 3, 4.)
5. The Appellant's treating physician at the facility, Dr. Elkin, has determined and documented in the Appellant's medical record that he is not in need of nursing home care and that discharge to a shelter in the community is medically appropriate. (Exhibit 1.)

6. Before his hospitalization and then admission to Beach Gardens, the Appellant had resided at the ██████████ Shelter, at ██████████.

7. The discharge notice advised the Appellant he would be discharged back to the ██████████ Shelter, which has accepted him. The shelter can provide ongoing assistance with housing and social services. The discharge plan includes appropriate arrangements for transportation to the shelter, and medication and medical care referrals. (Exhibit 2.)

8. The Appellant remains at Beach Gardens pending the outcome of this hearing.

**ISSUES**

Has the Respondent established that the Appellant's discharge is authorized and that the discharge plan is appropriate?

**APPLICABLE LAW**

A residential health care facility (RHCF), 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 Public Health Law 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:

...

(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.

...

(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.

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

### DISCUSSION

The Respondent presented documents (Exhibits 1-4) and testimony from:

1. Dmitry Elkin, MD, treating physician
2. Micheline Numa, occupational therapist
3. Sacha Cleary, RN, nursing director
4. Mopsy Adeyemi, director of social work
5. Gina Solomita, administrator

The Appellant testified. The notice of hearing and [REDACTED], 2023 discharge notice are in evidence as ALJ Exhibit I. A digital recording of the hearing was made. (1h36m.)

The Respondent has established, and it is uncontroverted, that the Appellant is no longer in need of nursing home care. This is the unanimous opinion of the facility's nursing, physical and occupational therapy, social work, medical, and administrative staff. He was discharged from physical and occupational therapy in early [REDACTED] 2022. (Exhibit 3.) He self-administers his medication. He ambulates independently with a rolling walker and is independent with activities of daily living (ADL). His treating physician at the facility, Dr. Elkin, has evaluated him and documented in the facility record that he is cleared for discharge and can return to the shelter. (Exhibit 1.) The Appellant presented no medical opinion suggesting that he requires nursing home care,

nor does he even claim that he does continue to require it. Appropriate grounds for discharge have been established.

A nursing home must permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(i)(1)(vii). The Respondent has complied with this regulation by making efforts to include the Appellant in discharge planning. (Exhibits 2, 4.)

The Respondent began discussing discharge planning with the Appellant in 2022. It attempted to arrange placement in an adult home and secured his acceptance at [REDACTED], but the Appellant refused to go there because the cost would consume most of his income. Several other adult homes to which the Respondent made referrals declined to accept or were refused by him after interviews. The Appellant's claims at the hearing that the Respondent refuses to assist him with or has prevented his completion of a housing voucher are not consistent with the evidence and testimony of the facility physician and staff that he has not been cooperative in completing the necessary paperwork. The Appellant has not identified other options for the Respondent to explore, nor has he demonstrated efforts of his own to develop a plan.

The Appellant objects to the Respondent's discharge plan to return him to the [REDACTED] Shelter, where he resided before his hospitalization and admission to the Respondent for rehabilitation. He said he wants to go to a different shelter but failed to explain how or establish that such a choice is available or that the Respondent has prevented him from pursuing it. In the absence of a demonstrable and realistic plan for another discharge option, referral back to the shelter which has accepted him, and where he had last resided, is an appropriate discharge plan. Further housing assistance and

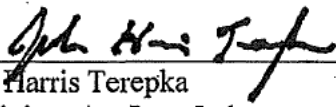
resources can be made available to him at the shelter. Under these circumstances, the Respondent's plan is appropriate and the Respondent is entitled to proceed with it. The Respondent has met its burden of proving that the discharge is authorized and the discharge plan is appropriate.

**DECISION:**

Respondent Beach Gardens Rehab & Nursing Center has established valid grounds for the discharge of Appellant [REDACTED] and has established that its discharge plan is appropriate. The Respondent is authorized to discharge the Appellant in accordance with the [REDACTED] 2023 discharge notice.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York  
April 18, 2023

  
\_\_\_\_\_  
John Harris Terepka  
Administrative Law Judge  
Bureau of Adjudication