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## Department of Health

**KATHY HOCHUL**  
Governor

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

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

June 28, 2023

### CERTIFIED MAIL/RETURN RECEIPT

[REDACTED]  
c/o Park Avenue Extended Care Facility  
425 National Blvd.  
Long Beach, New York 11561

Eve Koopersmith, Esq.  
Garfunkel Wild, P.C.  
111 Great Neck Road  
Great Neck, New York 11021

Amanda Rabinowitz, DSW  
Park Avenue Extended Care Facility  
425 National Blvd.  
Long Beach, New York 11561

**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  
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,

COPY

from a determination by

DECISION

**Park Avenue Extended Care Facility  
Respondent,**

to discharge him from a residential health care facility.

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Hearing Before: Jean T. Carney  
Administrative Law Judge

Held via: Cisco WebEx videoconference

Hearing Date: June 8, 2023  
Record closed on June 19, 2023

Parties: Park Avenue Extended Care Facility, Respondent  
By: Eve Koopersmith, Esq.  
Garfunkel Wild, P.C.  
ekoopersmith@garfunkelwild.com

████████████████████ Appellant, *pro se*

## JURISDICTION

By notice dated [REDACTED], 2023, Park Avenue Extended Care Facility (Respondent or Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] [REDACTED] (Appellant or Resident) from the Facility to his home. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i).

## HEARING RECORD

In support of its determination, the facility presented documents (Exhibits 1-4, 6 and 7)<sup>1</sup>; and the testimony of Amanda Rabinowitz, Assistant Administrator and Director of Social Work. The Appellant testified in his own behalf and presented the testimony of [REDACTED]. The Notice of Hearing with discharge notice, and the resident face sheet, were admitted as ALJ I, and II respectively. The hearing was digitally recorded and made part of the record.

## ISSUES

Has the Facility 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 testimony (T) and exhibits (Exh) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was rejected in favor of

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<sup>1</sup> Facility proposed exhibit 5 was marked for identification but not admitted into evidence.

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

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility for short term rehabilitation on [REDACTED] 2022. (T Rabinowitz; ALJ II).

2. The Appellant is not eligible for Medicaid because he owns property in [REDACTED] and in [REDACTED] New York. In [REDACTED] of 2023, Medicare stopped paying for the Appellant's stay at the facility, and he became responsible for the costs of his treatment. (T [REDACTED] and Rabinowitz; Exh 6).

3. The Facility made numerous attempts to discuss the Appellant's financial obligations with him, and delivered invoices to him and his [REDACTED] each month detailing the amounts owed. The Appellant has made two partial payments, for which he was credited, and refuses to pay any more. As of the date of the hearing, the Appellant owed \$ [REDACTED]. (T Rabinowitz; Exh 6).

4. The Appellant is capable of making decisions regarding his care. His Brief Interview for Mental Status (BIMS) score is [REDACTED]/15; he is independent in his Activities of Daily Living (ADL). The Appellant was successfully discharged from Physical Therapy on [REDACTED] 2023, having met all his goals; and was medically cleared for discharge to his home by the attending physician. (T Rabinowitz; Exhs 1, 3, 4 and 7).

6. The Facility began discharge planning with the Appellant and his [REDACTED] in [REDACTED] of 2023. They discussed installing adaptive equipment in his home, including a commode, a high back reclining wheelchair, and a ramp. Arrangements were made for home health care, and follow up appointments with his primary care physician. As of the date of the hearing, the Appellant no longer needs a ramp because he can navigate the steps into the home; and he no longer needs home health care services. (T Rabinowitz; Exhs 1 and 7).

### 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)(4)(b), a resident may be discharged when the resident has failed to pay for a stay at the facility after being given reasonable and appropriate notice. If a resident becomes eligible for Medicaid, the facility may only charge the amount allowed by Medicaid. (10 NYCRR § 415.3[i][4][b]).

A resident may be transferred when the interdisciplinary care team, in consultation with the resident or the resident's representative, determines that the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility. (10 NYCRR § 415.3[i][1][i][a][2]).

The facility must 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 those needs will be met after discharge. (10 NYCRR 415.3[i][1][vi]). The facility must also 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 burden is on the facility 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 [3<sup>rd</sup> Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

### DISCUSSION

The Facility alleges that the Appellant has failed to pay for his stay after being given reasonable notice that payment is due. The proposed discharge location is to the Appellant's home in [REDACTED], based on his health having improved sufficiently so that he no longer needs the services provided by the facility. The Facility has presented sufficient evidence that the Appellant's discharge is necessary, and the discharge plan is appropriate.

#### **Determination to Discharge**

The evidence shows that the Appellant has incurred charges in excess of \$ [REDACTED]. The Facility provided the Appellant with sufficient notice of his obligation to pay, and the consequences of his failure to pay.

The Appellant admitted that he has failed to make payments to his outstanding balance since [REDACTED] of 2023. He contends that his [REDACTED] informed him that Medicaid would pay his bill, but then testified that he has not applied for Medicaid because he would not be left with enough money to pay his other bills. The Appellant further testified that his home in [REDACTED] has been placed in foreclosure, and he gifted his other property; but presented no evidence to support these claims. The Appellant also testified that his [REDACTED] controls his finances.

The evidence shows that the Facility has tried to work with the Appellant regarding his outstanding balance; but that the Appellant has not cooperated with the Facility. The Appellant asked for another six months to complete the Medicaid

application; but the fact that he owns property is evidence of sufficient resources to pay the Facility's bill. Consequently, the facility's determination to discharge the Appellant is sustained.

### **Discharge Plan**

The Facility has established that the Appellant's health has improved sufficiently so that he no longer needs the services provided by the Facility. The evidence reflects the Appellant's ability to ambulate, groom and toilet independently. Additionally, the Facility has provided sufficient preparation and orientation to ensure the Appellant's safe and orderly discharge from the facility.

The Appellant's [REDACTED] testified that they reside in separate residences, and she believes that he continues to require skilled nursing provided by the Facility. She also testified that she would be unable to care for the Appellant if he was discharged due to her own health concerns. The Appellant testified that if he was discharged home, he would not know how to manage his life or take care of his daily needs because he relies on his [REDACTED]. The Appellant claims that he spends most of the day in bed, yet admitted to leaving the facility on occasion. The Appellant and his [REDACTED] were evasive in their testimony, and tried to minimize the Appellant's abilities. The Facility included both the Appellant and his [REDACTED] in discharge planning; but they were uncooperative. The Facility has established that its determination to discharge the Appellant to his home in [REDACTED] is appropriate.


### **DECISION**

1. The Facility has shown that the Appellant's discharge is necessary.
2. The Facility may discharge the Appellant pursuant to the discharge notice dated [REDACTED], 2023.
3. This Decision may be appealed to a court in the appropriate jurisdiction.




4. This Decision shall become effective upon service to the parties.

DATED: Albany, New York  
June 28, 2023

  
JEAN T. CARNEY  
Administrative Law Judge

TO: Eve Koopersmith, Esq.  
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111 Great Neck Road  
Great Neck, NY 11021

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