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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

August 10, 2023

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Bishop Rehabilitation and Nursing Center  
918 James Street  
Syracuse, New York 13203

Yonatan Balin, NHA  
Bishop Rehabilitation and Nursing Center  
918 James Street  
Syracuse, New York 13203

**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: nm  
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

**Bishop Rehabilitation and Nursing Center,**  
Respondent,

to discharge him from a residential  
health care facility.

COPY

DECISION

DA23-6094

Hearing Before: Jeanne T. Arnold  
Administrative Law Judge

Held via: WebEx Videoconference

Hearing Date: August 7, 2023

Parties: Bishop Rehabilitation and Nursing Center  
918 James Street  
Syracuse, New York 13203  
By: Yonatan Balin, Administrator

██████████  
*Pro Se*

**JURISDICTION**

Bishop Rehabilitation and Nursing Center (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge resident ██████████ (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR 415.3(i).

**HEARING RECORD**

Facility witnesses: Yonatan Balin, Administrator  
Amanda Chisamore, Director of Rehabilitation  
Lorraine Hruby, Registered Nurse  
Jessica Mitchell, Social Worker

Facility exhibits: A-D

Appellant witnesses: ██████████ ██████████ Appellant  
Margaret R. Sweeney, Ombudsperson

Appellant exhibits: None

ALJ exhibit: I

A digital recording of the hearing was made (1:09:35 in duration).

**FINDINGS OF FACT**

1. The Appellant is a ██████-year-old male who was transferred from ██████ Hospital to the Facility and admitted on ██████ 2023, for acute, physical rehabilitation after complications of ██████. The Appellant also has been diagnosed with, among other things, ██████ (Exhibit C; Recording @ 5:00-6:00.)
2. During his stay at the Facility, the Appellant received physical and occupational therapy services. He was discharged from all therapies by ██████ 2023, when rehabilitation staff determined that the Appellant had reached his maximum functional ability and no longer required such services. (Exhibits C, D; Recording @ 42:00, 51:00.)
3. The Appellant does not currently receive any medical or therapeutic services at the Facility. (Exhibits C, D; Recording @ 51:00.)
4. The Appellant independently performs all activities of daily living (ADLs). (Exhibits B, C, D; Recording @ 37:00, 48:00.)

5. By notice dated ██████████, 2023, the Facility determined to discharge the Appellant on ██████████ 2023, because his health has improved sufficiently so that he no longer requires the services provided by the Facility. The notice advised the Appellant that he would be discharged to ██████████ ██████████, an assisted living facility. (Exhibit A.)

6. The Appellant's clinical record contains documentation from his interdisciplinary team, including his physician and social worker, that the Appellant's condition has improved such that he no longer requires the services of a nursing home, and that discharge to an assisted living facility is appropriate. (Exhibits B, C; Recording @ 46:00, 50:00, 52:00.)

7. On ██████████, 2023, the Appellant requested this hearing to contest the Facility's discharge determination.

8. The Appellant remains at the Facility pending the outcome of the hearing.

#### ISSUES

Has the Facility established that the Appellant's discharge is necessary and that the discharge plan is appropriate?

#### APPLICABLE LAW

A residential health care facility, or nursing home, is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. PHL §§ 2801(2)-(3); 10 NYCRR 415.2(k).

Public Health Law § 2803-z and Department regulations at 10 NYCRR 415.3(i) describe the transfer and discharge rights of residential health care facility residents. The regulations state, in pertinent part:

(1) With regard to the 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.

When the facility transfers or discharges a resident for this reason, the facility shall ensure that the resident's clinical record contains complete documentation made by the resident's physician and, as appropriate, the resident's interdisciplinary care team. 10 NYCRR 415.3(i)(1)(ii)(a). The facility has the burden of proving that the discharge was necessary and the discharge plan appropriate. 10 NYCRR 415.3(i)(2)(iii)(b); State Administrative Procedure Act § 306(1).

### DISCUSSION

To prove that the Appellant's health has improved sufficiently so that he no longer needs the services provided by the Facility, the Facility presented provider/physician notes detailing that the Appellant's complications from [REDACTED], such as [REDACTED] and [REDACTED] have improved. (Exhibit C.) The physician noted that the Appellant can ambulate without assistance, no longer receives physical or occupational therapy, is clinically stable, and no longer requires nursing home care. (Exhibit C.)

Upon admission to the Facility, the Appellant received physical therapy, occupational therapy and speech therapy, but he was discharged from all therapies after attaining his maximum functional level as early as [REDACTED] 2023. (Exhibits C; Recording @ 42:00, 51:00.) Although the Appellant described symptoms of [REDACTED] and [REDACTED] to the physician after [REDACTED] the Appellant refused further physical and occupational therapy. (Exhibit C.) The

Appellant independently performs all ADLs. (Exhibit D; Recording @ 37:00, 46:00, 48:00.) His Brief Interview for Mental Status (BIMS) score is █/15. (Exhibits B, C; Recording @ 10:00.)

The Appellant contends that he still requires the Facility's services because he had █ within one year and continues to suffer from symptoms including █, and █. (Recording @ 1:04:00-1:05:00.) The Appellant claims that the Facility failed to provide appropriate medical care and would not take him to the hospital, yet he does not want to leave the Facility. (Recording @ 57:00; 1:05:00.) The physician explained to the Appellant during examination that the Appellant's lingering ailments are chronic and can be followed up outpatient. (Exhibit C.) The Appellant did not offer any contrary medical proof. Ombudsperson Sweeney, who has been communicating with the Appellant since █ 2023, testified that while the Appellant has indicated that he wishes to stay at the Facility until █ 2024, he cannot articulate what services he needs from the Facility. (Recording @ 1:01:00.)

With respect to the proposed discharge plan, the Facility used its best efforts, including compliance with PHL § 2803-z(1)(b) and applicable federal and state regulations, to secure an appropriate placement for the Appellant. (Exhibit B.) In March 2023, the Appellant was accepted for discharge to the local Department of Social Services, but he did not agree so the Facility worked to facilitate different options, including exploration of assisted living facilities. (Recording @ 54:00.) On █, 2023, the Appellant's interdisciplinary team met again to discuss the Appellant's discharge, but he declined to attend. (Exhibit B.)

The Appellant's prior social worker attempted to meet with the Appellant in early █ 2023 to discuss discharge planning. The Appellant refused to sign an authorization for the Facility to work with the █ housing authority and selected few options on the forms the social

worker provided. (Exhibit B; Recording @ 10:00, 54:00.) Focus [REDACTED], a sister facility, sent a liaison and determined to accept the Appellant for placement but the Appellant indicated that he would not go. (Exhibit B; Recording @ 10:00, 53:00.)

An assisted living residence is an adult care facility that provides or arranges for housing, on-site monitoring, and personal care services and/or home care services in a home-like setting. An assisted living residence provides daily food service, on-site monitoring, case management services and the development of an individualized service plan for each resident. PHL § 4651.1. The individualized service plan shall be developed in accordance with the medical needs of the resident and shall include the services to be provided and how and by whom services will be provided and accessed. PHL § 4659. Because an assisted living residence provides a less restrictive level of care than a nursing home, the proposed transfer is consistent with the Facility's obligation to "provide each resident with considerate and respectful care designed to promote the resident's independence and dignity in the least restrictive environment commensurate with the resident's preference and physical and mental status." 10 NYCRR 415.4. The Appellant can obtain all the assistance he needs at an assisted living facility. (Recording @ 37:00, 50:00, 1:02:00.)

The Facility has continued attempts to work with the Appellant and, just last week, the Appellant's new social worker sent an application to [REDACTED] located in [REDACTED] New York. (Recording @ 22:00.) The Appellant signed this new application but has not agreed to go, even if accepted, and no one could predict how long the application process would take. (Recording @ 22:00, 31:00, 33:00.) The Ombudsperson testified that if the Appellant ultimately is accepted for placement at the [REDACTED] he could transfer from the [REDACTED] assisted living facility with relative ease. (Recording @ 34:00.)



The Appellant first said he preferred not to testify because he wished to obtain counsel. (Recording @ 59:00.) The Appellant, however, did not describe any efforts to obtain counsel for the current hearing, although he was served with the Notice of Discharge on [REDACTED] 2023. (Exhibit A.) The Appellant then offered a statement detailing his continued medical symptoms from COVID-19 and diabetes but did not comment on the current proposed discharge plan. (Recording @ 1:03:00.) After the hearing record closed, a 12-page-handwritten statement was received in the mail from the Appellant. The Appellant read part of this statement on the record. (Recording @ 1:04:00.) While the Appellant chose not to read the entire statement during the hearing, it nonetheless does not change the result herein.

Pursuant to 10 NYCRR 415.3(i)(1)(vii), the Facility was required to permit the Appellant an opportunity to participate in deciding where he will reside after discharge, and it did afford him opportunity to do so. (Exhibit B.) The Facility's interdisciplinary team made attempts to discuss the Appellant's placement with him, but he refused to participate (Exhibit B; Recording @ 54:00.)

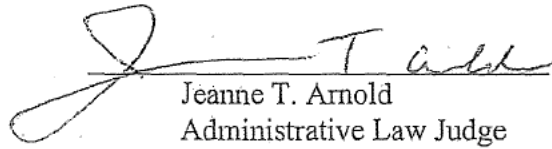
The Appellant did not identify any options other than [REDACTED] and instead indicated only that he would like to remain a resident at the Facility until affordable, subsidized housing becomes available. He asserts he will not be ready for discharge from the Facility until [REDACTED] 2024 without offering a reason why. (Recording @ 1:01:00.)

To the contrary, the Facility established that the Appellant currently is appropriate for discharge because he does not need nursing home care. (Exhibits B, C, D; Recording @ 17:00, 36:00, 50:00.) The Facility will provide the Appellant's medications and referrals for physical therapy, as requested and needed. (Recording @ 51:00.) The Facility's proposed discharge plan addresses the Appellant's needs and how those needs will be met after discharge. 10 NYCRR 415.3(i)(1)(vi).

**DECISION**

Bishop Rehabilitation and Nursing Center established that its determination dated ██████ 2023 to discharge the Appellant is correct and that its discharge plan is appropriate.

Dated: August 10, 2023  
Rochester, New York

  
Jeanne T. Arnold  
Administrative Law Judge