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# Department of Health

**KATHY HOCHUL**  
Governor

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

**JOHANNE E. MORNE, M.S.**  
Acting Executive Deputy Commissioner

October 13, 2023

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Massena Rehab & Nursing Center  
89 Grove Street  
Massena, New York 13662

David Hoffman, Esq.  
Claxton-Hepburn Medical Center  
214 King Street  
Ogdensburg, New York 13669

Ike Bogosian, NHA  
Massena Rehab & Nursing Center  
89 Grove Street  
Massena, New York 13662

John Darling, Esq.  
Travis Talerico, Esq.  
Bond Schoeneck and King, PLLC  
350 Linden Oaks, Third Floor  
Rochester, New York 14625

**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

**COPY**

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

[REDACTED]

Appellant,

from a determination by

**Massena Rehabilitation & Nursing Center,**

Respondent,

to discharge her from a residential  
health care facility.

**DECISION  
AFTER  
HEARING**

Docket # 6171

Hearing before: Kathleen Dix  
Administrative Law Judge  
October 10, 2023  
By WebEx Videoconference

Parties: Massena Rehabilitation & Nursing Center  
89 Grove Street  
Massena, NY 13662  
By: Travis Talerico, Esq.  
John Darling, Esq.

[REDACTED]  
c/o Massena Rehabilitation & Nursing Center  
89 Grove Street  
Massena, NY 13662

Claxton-Hepburn Medical Center  
214 King Street  
Ogdensburg, NY 13669  
By: David Hoffman, Esq.

## JURISDICTION

By notice dated [REDACTED], 2023, Massena Rehabilitation & Nursing Center, (Facility), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge [REDACTED] [REDACTED] (Appellant) from care and treatment in its Facility to "Claxton Hospital" (Hospital).

The hearing was held on October 10, 2023, in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); and the New York State Administrative Procedure Act (SAPA); via Webex videoconference. (2h 1m.) The Appellant did not attend the hearing. Evidence was received and witnesses were examined. A digital recording of the hearing was made.

## HEARING RECORD

### ALJ Exhibits:

1. Notice of Hearing and Notice of Discharge/Transfer.

### Facility's Exhibits:

1. Facility Administrator's Report of Incidents (undated) (1 page).
2. Progress Notes (47 pages).
3. Facility's Letter of Intent (10 pages).
4. Investigative Summaries (3 pages).

### Appellant's Exhibit:

None.

### Facility's Witnesses:

1. Alyssa Lader, Director of Nursing
2. Mary Beth Cameron, Director of Social Services
3. Ike Bogosian, Administrator

### Appellant's Witnesses:

1. Alina Parcels, Emergency Room Director
2. Miranda Simpson, Assistant Director of Nursing

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<sup>1</sup> Claxton-Hepburn Medical Center, 214 King Street, Ogdensburg, NY 13669.

## ISSUES

Has the Facility established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

## FINDINGS OF FACTS

1. Respondent is a residential health care facility, specifically a nursing home, within the meaning of PHL § 2801.2 and 10 NYCRR 415.2(k), located in Massena, New York.

2. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility from the Hospital, on [REDACTED], 2023, with a primary diagnosis of [REDACTED]  
[REDACTED]  
[REDACTED]. (Exhibit 3).

3. On [REDACTED] 2023, the Appellant was sent to the Hospital to be evaluated after she [REDACTED] and [REDACTED] of another Facility resident that morning. (T. Lader 10:14.)

4. By notice dated [REDACTED] 2023, the Respondent advised the Appellant of its determination to discharge her on [REDACTED] 2023, on the grounds that the health and safety of other individuals in the facility is endangered because of her actions – “Resident to resident with [REDACTED] on multiple occasions”. (ALJ Exhibit I.)

5. The discharge notice advised the Appellant she would be discharged to the Hospital. (ALJ Exhibit I.)

6. On [REDACTED] 2023, the Hospital received notice that the Facility would not re-admit the Appellant. (T. Simpson 1:34, 1:40.)

7. The Appellant remains at the Hospital in a holding bed in the emergency department pending the outcome of this hearing. (T. Hoffman 3:13.)

## APPLICABLE LAW

A residential health care facility, 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 PHL § 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:

...

(3) the safety of individuals in the facility is endangered; or

(4) the health of individuals in the facility is endangered;

...

(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. . .

When alleging that a transfer or discharge is appropriate because the safety or health of individuals in the facility is endangered, the necessity of the transfer or discharge must be documented in the resident's medical record by a physician. 10 NYCRR 415.3(i)(l)(ii)(b) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(B).

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

### DISCUSSION

The Facility is seeking to discharge the Appellant and asserts that the Appellant's actions have endangered the health and safety of other individuals in the facility as she has been [REDACTED] with other residents on multiple occasions. (ALJ Exhibit I and Facility Exhibits 1 and 4, T. Talerico 7:37, T. Lader 8:54-10:40.). The Appellant, a [REDACTED]-year-old woman, was admitted to the Facility on [REDACTED], 2023, with a primary diagnosis of [REDACTED] and



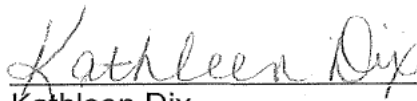
While the regulations do allow for the discharge of residents who are a threat to the health and safety of others, the Facility must follow the regulatory requirements for a proper discharge. In the present case, the Facility did not do so and thus failed to meet its regulatory obligations. The necessity of the discharge was not documented in the Appellant's medical record by a physician, the Facility never commenced a discharge planning process for the Appellant's discharge to an appropriate facility, nor did it provide sufficient preparation to the Appellant for the discharge, and the Facility's refusal to re-admit the Appellant is improper.

### DECISION

The Facility failed to establish that its determination to discharge the Appellant is correct and that its discharge plan is appropriate.

1. Massena Rehabilitation & Nursing Center is not authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED] 2023. Massena Rehabilitation & Nursing Center must readmit the Appellant to the first available semi-private bed before it admits any other person to the Facility. 10 NYCRR 415.3(i)(2)(i)(d).
2. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules.

Dated: Menands, New York  
October 13, 2023

  
\_\_\_\_\_  
Kathleen Dix  
Administrative Law Judge



To: David Hoffman, Esq.  
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