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# Department of Health

**KATHY HOCHUL**  
Governor

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

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

February 6, 2024

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o The New Jewish Home Manhattan  
120 W. 106<sup>th</sup> Street  
New York, New York 10025

Margaret Bondy, DSW  
The New Jewish Home Manhattan  
120 W. 106<sup>th</sup> Street  
New York, New York 10025

**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**

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

██████████

Appellant,

from a determination by

**The New Jewish Home, Manhattan**

Respondent,

to discharge her from a residential  
health care facility.

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**DECISION  
AFTER HEARING**

#DA23-6240

Hearing Before: Kendra Vergason  
Administrative Law Judge

Held at: New York State Department of Health  
by videoconference  
January 8, 17, 29, 2024

Parties: The New Jewish Home, Manhattan  
120 West 106<sup>th</sup> Street  
New York, New York 10025  
By: Margaret Bondy, LCSW, ACSW – Director of Social Work  
[MBondy@jewishhome.org.com](mailto:MBondy@jewishhome.org.com)

██████████  
The New Jewish Home  
By: *Pro Se*  
████████████████████



4. On ██████████, 2023, the Facility issued a Notice of Discharge or Transfer to the Appellant which proposed discharge to her home in the community because her health has improved sufficiently such that she no longer needs the services of the facility. (ALJ Ex. I.)

5. The discharge plan includes approximately 40 hours of certified home health agency services, 30 days medication supply, medical appointment referrals, and social services referrals. The Appellant will be provided with transportation home. (T Lependorf, Lee.)

6. The Appellant remains at the Facility pending the outcome of this appeal.

### **ISSUE**

Has The New Jewish Home, Manhattan proven that its determination to discharge the Appellant was authorized and that the discharge plan is appropriate?

### **APPLICABLE LAW**

A nursing home is a residential facility that provides regular nursing services, professional services and physical care to sick, invalid, infirm disabled or convalescent persons who do not need the services of a general hospital. NY PHL § 2801(2),(3); 10 NYCRR § 415.2(k). The Facility, located in Manhattan, New York, is a nursing home within the meaning of PHL § 2801(2) and is subject to federal and state laws and regulations relating to the discharge and transfer of its residents. 10 NYCRR § 400.2.

Transfer and discharge rights of nursing home residents are set forth in Public Health Law § 2803-z, Department regulations at 10 NYCRR § 415.3(i) and federal regulations at 42 CFR § 483.15(c). A nursing home may discharge a resident when the interdisciplinary care team, in consultation with the resident, determines that "the discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility." 42 CFR § 483.15(c)(1)(i)(B); 10 NYCRR § 415.3(i)(1)(i)(a)(2). When discharge is for this reason, the nursing home must ensure that the resident's clinical record contains complete documentation made by the resident's physician that includes the basis for the discharge. 42 CFR § 483.15(c)(2); 10 NYCRR § 415.3(i)(1)(ii).

Further, the nursing home must provide and document sufficient preparation and orientation to the resident to ensure safe and orderly 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. 42 CFR § 483.15(c)(7); 10 NYCRR § 415.3(i)(1)(vi). The discharge summary shall include a recapitulation of the resident's stay; a final summary of the resident's status that includes information from the resident's comprehensive assessment; a complete medication reconciliation; and a post-discharge plan of care "developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment and assure that needed medical and supportive service have been arranged and are available to meet the identified needs of the resident." 10 NYCRR § 415.11(d). The facility 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 facility has the burden of proving that the discharge is necessary and the discharge plan appropriate. 10 NYCRR § 415.3(i)(2)(iii)(b).

#### **DISCUSSION**

The Facility has established that the Appellant is no longer in need of nursing home services. The Appellant's physician, nurse practitioner, and the nurse manager each testified that the Appellant is independent with all activities of daily living (ADLs), including ambulation, and independent administration of her medications – as she has frequently demonstrated while on overnight therapeutic leave to her apartment. Dr. Reyes-Arcangel, the Appellant's treating physician at the Facility, assessed the Appellant and documented in the clinical record that Appellant's chronic medical problems are stable, and she is medically cleared and appropriate for discharge to her apartment in the community.

At the hearing, much of the Appellant's concerns about her discharge focused on continuation of the outpatient medical care she is currently receiving and access to medical appointments and doctors once she is discharged. However, these concerns were addressed by

the Facility social worker who explained that the Appellant's Medicaid Long Term Care coverage has not changed; she will continue with her current outpatient care and will be able to receive any necessary transportation to medical appointments from her insurer. (T Lependorf.)

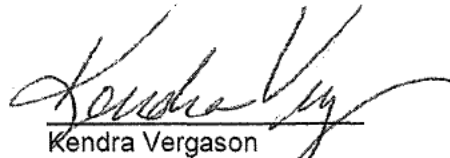
The Appellant's apprehension is understandable, but she is not entitled to remain in nursing home care when she no longer needs the services provided by the Facility. PHL § 2803-z(1)(f). The Appellant's medical and functional needs can be safely and appropriately managed through services in the community. The Appellant has been approved for, and will receive, approximately 40 hours of home care services when she returns home; necessary follow-up medical appointments have been scheduled and transportation has been arranged; and applications and referrals for non-medical social support services have been submitted. (T Lependorf.) The proposed discharge plan addresses the Appellant's needs and how those needs will be met after discharge. 10 NYCRR § 415.3(i)(1)(vi).

The Appellant requested and was granted the opportunity to submit a written statement to support her appeal of the discharge. However, she did not provide any information to refute the Respondent's evidence that she no longer needs the services in the Facility and that the discharge plan is not appropriate.

**DECISION**

The appeal is denied. The New Jewish Home, Manhattan has established that its determination to discharge the Appellant was correct and that its discharge plan is appropriate. The New Jewish Home, Manhattan is authorized to discharge the Appellant in accordance with the ██████████ 2023, discharge notice.

Dated: February 5, 2024  
Rochester, New York

  
Kendra Vergason  
Administrative Law Judge