



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Acting Commissioner

**SALLY DRESLIN, M.S., R.N.**  
Executive Deputy Commissioner

January 13, 2017

**CERTIFIED MAIL/RETURN RECEIPT**

Sheela Alexander, LMSW  
East Haven Nursing &  
Rehabilitation Center  
2323 Eastchester Road  
Bronx, New York 10469

██████████, Resident  
c/o East Haven Nursing &  
Rehabilitation Center  
2323 Eastchester Road  
Bronx, New York 10469

Lourdes Martinez, Esq.  
Garfunkel, Wild P.C.  
111 Great Neck Road – 6<sup>th</sup> Fl.  
Great Neck, New York 11021

**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,

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH:nm  
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

**[REDACTED]**,

Appellant,

from a determination by

**East Haven Nursing & Rehabilitation Center,**

Respondent,

to discharge her from a residential health care facility.

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**DECISION**

**Hearing Before:**

Ann H. Gayle  
Administrative Law Judge

**Held at:**

East Haven Nursing & Rehabilitation Center  
2323 Eastchester Road  
Bronx, New York 10469

**Hearing Date:**

December 29, 2016  
The record closed on January 12, 2017

**Parties:**

East Haven Nursing & Rehabilitation Center  
By: Lourdes Martinez, Esq.  
Garfunkel, Wild P.C.  
111 Great Neck Road - 6<sup>th</sup> Floor  
Great Neck, New York 11021

**[REDACTED]**  
*Pro Se*

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as East Haven Nursing & Rehabilitation Center (“Respondent” or “Facility”) 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.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(h). Respondent determined to discharge █ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(a)(2) which provides, in pertinent part:

- (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.

Appellant appealed the discharge determination to the New York State Department of Health, and a hearing on that appeal was held. Pursuant to 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

This hearing was digitally recorded and transferred to a compact disc (“CD”); the CD has become part of the record. Appellant testified on █ own behalf. The following Facility representatives testified for Respondent: Felix Volozin, M.D., and Sheela Alexander, Director of Social Work. Lourdes Martinez, Esq., represented the Facility at the hearing and on all conference calls.

The following documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ and Facility Exhibits:

ALJ:

- 1: Notice of Hearing with the Facility’s Discharge Notice attached

Facility:

- 1: Face Sheet and reports – 3 pages

Appellant was given the opportunity but did not offer any documents into evidence.

**ISSUE**

Has East Haven Nursing & Rehabilitation Center established that the transfer is necessary and the discharge plan is appropriate?

**FINDINGS OF FACT**

Citations in parentheses refer to testimony (“T”) of witnesses and exhibits (“Ex”) found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejected in favor of the cited evidence.

1. Respondent, East Haven Nursing & Rehabilitation Center, is a residential health care facility located in Bronx, New York. (Ex I)
2. Appellant, █, age █, was admitted to the Facility on █, 2016 from █ Medical Center for rehabilitation services. Appellant’s chronic and current medical conditions, which include █, █, and █, can be treated in the community. (Ex 1; T Volozin, Alexander)
3. By notice dated █, 2016, Respondent advised Appellant that it had determined to discharge █ on the grounds that █ health has improved sufficiently to allow a more immediate discharge. (Ex I)

4. Respondent proposes to transfer Appellant to the █ Shelter (“Shelter”) located at █, █, █. Appellant will be discharged with a Rollator and a 14-day supply of her current medications. The Shelter has resources to assist Appellant in locating more permanent housing. (Ex I; T Alexander)
5. It is the professional opinion of Appellant’s caregivers at the Facility, including the Facility’s physician, that discharge to the community, including the Shelter, is appropriate for Appellant. (Ex 1; T Volozin, Alexander)
6. Appellant has remained at the Facility pending the outcome of this proceeding.

#### DISCUSSION

Respondent’s proposal to discharge Appellant pursuant to 10 NYCRR §415.3(h)(1)(i)(a)(2) is based on the ability of Appellant’s medical conditions to be treated in the community and on █ independence with all █ ADLs (activities of daily living). The evidence presented by both Appellant and Respondent confirmed Appellant’s current independence and that Appellant required skilled care and rehabilitative services upon admission in █ 2016, █ completed occupational therapy in █ and physical therapy in █, and █ currently ambulates with a rolling walker within the Facility and when █ goes out on pass. Appellant believes █ still requires skilled care because, although █ health has improved since admission, █ still gets “█” and other █, daily, and █ will require █ and █ medication for life. I find that Respondent has proven that Appellant no longer requires skilled care, and that Appellant is able to independently manage █ medications and medical conditions which can be addressed in the community.

The testimony presented at the hearing indicated that discharge planning began in the █ of 2016 upon Appellant’s obtaining a source of income. Because Appellant’s previous living

█ / East Haven

arrangement in the community, *i.e.*, sharing her boyfriend's apartment, was no longer available, Respondent made attempts to secure a discharge for Appellant to an assisted living or adult home setting. █, an assisted living facility, did not accept Appellant because, at █ years of age, █ does not meet its requirement to be at least █ years of age; and the screening process for █, an adult home, was aborted when Appellant indicated to the representative from that facility that █ wanted a private room, and no such room was available. Ms.

Alexander testified that adult homes cannot guarantee a private room unless the resident will be paying privately. Respondent then identified the Shelter as a last resort. The Shelter provides vocational and medical services, and it has resources to assist Appellant with securing housing.

Appellant testified that █ does not want to go to the Shelter but █ will if ordered to do so. During the December 29 hearing, Appellant indicated that although █ had previously indicated that █ wanted private-room housing in the community, █ was now amenable to considering a shared-room setting. With the discharge date of █, 2017 still two weeks away, the Parties agreed to work with each other to identify housing options for Appellant that might require sharing a room. Conference calls were held on January 4, 6, and 12, 2017 to discuss the Parties' progress with their attempts to secure housing for Appellant. The Parties reported on the conference calls that Respondent was able to make arrangements for Appellant to apply to and visit various settings, that such visits and screenings occurred, and that Appellant rejected all but one setting, and that setting does not currently have a █ bed available. The Parties agreed to continue to work together on discharge planning, and the record closed on January 12, 2017.

█ / East Haven

I find that Respondent has proven that Appellant's health has improved sufficiently so that █ no longer requires skilled care, and that the Shelter is an appropriate discharge location for Appellant.

**DECISION**

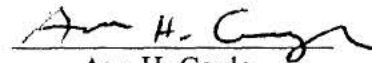
I find that the transfer is necessary and the discharge plan is appropriate.

The appeal by Appellant is therefore DENIED.

Respondent—East Haven Nursing & Rehabilitation Center is authorized to discharge Appellant in accordance with its █, 2016 discharge notice.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

Dated: New York, New York  
January 13, 2017

  
Ann H. Gayle  
Administrative Law Judge

TO: █  
c/o East Haven Nursing & Rehabilitation Center  
2323 Eastchester Road  
Bronx, New York 10469

Sheela Alexander, Director of Social Work  
East Haven Nursing & Rehabilitation Center  
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