



**Department  
of Health**

**ANDREW M. CUOMO**  
Governor

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

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

June 26, 2018

**CERTIFIED MAIL/RETURN RECEIPT**

Lisa Ferraro, Director of Social Work  
Bishop Rehabilitation and Nursing Center  
918 James Street  
Syracuse, New York 13202

[REDACTED]  
C/o Bishop Rehabilitation and  
Nursing Center  
918 James Street  
Syracuse, New York 13202

**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,

*James F. Horan* /CAC  
James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cac  
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH

-----X  
In the Matter of an Appeal, pursuant to :  
10 NYCRR § 415.3, by :

[Redacted]

Appellant, :

from a determination by :

BISHOP REHABILITATION AND :  
NURSING CENTER :

Respondent, :

to discharge him from a residential health :  
care facility. :

-----X

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DECISION

Hearing Before:

Matthew C. Hall  
Administrative Law Judge

Held at:

Bishop Rehabilitation and  
Nursing Center  
918 James Street  
Syracuse, New York 13202

Hearing Date:

June 6, 2018

Parties:

Bishop Rehabilitation and  
Nursing Center

[Redacted]

Pro Se

JURISDICTION

By notice dated [REDACTED] 2018, Bishop Rehabilitation and Nursing Center (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) § 415.3(h).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and attached Facility Discharge Notice

Facility Exhibits: 1 - Documentation Survey Report [REDACTED]  
2 - Letter from clinic [REDACTED] /18)  
3 - Consultation Notes [REDACTED] /18)  
4 - Progress Notes [REDACTED] 15 thru [REDACTED] (18)  
5 - Physical Therapy Discharge [REDACTED] (18)  
6 - Progress Notes [REDACTED] /18 thru [REDACTED] (18)

Facility Witnesses: Shannon Baxter - Wound L.P.N.  
Tim Reedy - Assistant Administrator  
Heather Glavo - R.N., Covering Nurse Manager  
Lisa Ferraro - Director of Social Work  
Terri Levine - Nurse Practitioner

Appellant's Exhibits: A - Consultation Forms [REDACTED] 18)

Appellant's Witness: Appellant Testified on his own behalf

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") of witnesses and exhibits ("Ex") found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant is a [REDACTED] year-old man who was admitted to the Facility on [REDACTED] 2017. (Ex 4, Ex 6, T Ferraro)

2. He was admitted with diagnoses including [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] pain. (Ex 4, Ex 6)

3. By notice dated [REDACTED] 2018, the Facility determined to discharge the Appellant on [REDACTED] 2018 because the resident's "health has improved sufficiently" so that he "no longer need(s) the services offered at (the) Facility." (ALJ I)

4. The Facility determined to discharge the Appellant to a [REDACTED] shelter located at [REDACTED] or another location "of the Resident's choosing." (ALJ I)

5. Upon admission to the Facility, the Appellant required skilled nursing care for rehabilitation for [REDACTED] [REDACTED] extremity. (Ex 6)

6. During his time at the Facility, the Appellant completed his sub-acute rehabilitation. On [REDACTED] 2018, he was discharged from physical therapy at the Facility having reached "maximum potential with skilled services." (Ex 5)

7. At the time of this hearing, the Appellant was managing his appointments with wound care and [REDACTED] specialists in the community independently. (Ex 5, Ex 6, T Reedy, Baxter, Glavo, Ferraro)

8. The Appellant receives all treatments from the wound care and [REDACTED] specialists on an outpatient basis, using medical transportation that he schedules himself. (Ex 6, T Reedy, Ferraro)

9. The Appellant does not allow any medical care to be provided by the interdisciplinary team at the Facility. (Ex 6, T Reedy, Baxter, Ferraro)

10. The Appellant is independent in his Activities of Daily Living (ADLs). (Ex 5)

11. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending Physician, that discharge to the community, including a shelter, is appropriate for Appellant. (Ex 6, T Baxter, Glavo, Levine)

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

APPLICABLE LAW

A residential health care facility (also referred to in the Department of Health Rules and Regulations 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)(3); 10 NYCRR § 415.2(k).

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR 415.3[h][1]).

The Facility alleged that the Resident's discharge is permissible pursuant to 10 NYCRR § 415.3(h)(1)(i)(a)(2), which states:

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.

Under the hearing procedures at Title 10 NYCRR §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under the New York State Administrative Procedures Act (SAPA) § 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a 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.

#### DISCUSSION

##### Reason for Discharge

Regarding whether the resident's health improved sufficiently and the resident no longer require(s) the services of a skilled nursing facility:

The Appellant was admitted to the Facility on [REDACTED] 2017, with multiple diagnoses including [REDACTED]

[REDACTED] The Appellant completed sub-acute rehabilitation and during his time at the Facility, his health improved to the point where he no longer needed rehabilitation.

Dr. Jeanne Bishop, the Facility's Medical Director, noted that the Appellant began managing his own care by scheduling appointments to outpatient medical providers in the community and arranging his own medical transportation to and from these appointments. He also refused any kind of medical care from the staff at the Facility. Dr. Bishop provided, "It is my belief that [the Appellant] can be safely discharged." (Ex 6).

Kaleigh Fahnestock, R.N., noted that, "At this time [redacted] /18], the resident provides self-care. Resident visits wound clinic and [redacted] clinics weekly, where his [redacted] wounds are cared for. Resident is able and has set up transport for himself, to and from these appointments. Resident does not allow care for his wounds in this facility. He does not allow staff to assess wounds or change dressings. Resident is aware of all medications on his current regimen. Resident has the ability to self-administer medication if needed." (Ex 6)

The Appellant is independent with toileting, clothing management and hygiene. (Ex 5) The Appellant makes his own decisions and often leaves the Facility on his own, and on one occasion he left the Facility for an overnight stay, unauthorized by the Facility. (Ex 4, T Reedy, Ferraro).



Accordingly, the Facility has proven that the resident's health has improved sufficiently and the resident no longer require(s) the services of a skilled nursing facility.

Discharge Location

The Appellant desires to be placed in a facility other than a homeless shelter. The Facility has tried to find other accommodations for the Appellant, and is continuing to do so. The Appellant was evicted from his prior residence, an assisted living facility, for failure to pay his monthly rent. That facility, when contacted by the Director of Social Work, Lisa Ferraro, indicated that they were unwilling to accept the Appellant as a returning resident.

The Appellant is independent and capable of making his own decisions and setting his own schedule. This includes arranging appointments to outpatient medical providers, as well as transportation to and from these appointments.

The Facility and the Appellant are encouraged to continue to work together to find other living arrangements. While that search continues, however, placement in a homeless shelter is appropriate.

Accordingly, the Facility has proven that its plan to discharge the Appellant to a shelter is appropriate.

#### CONCLUSION

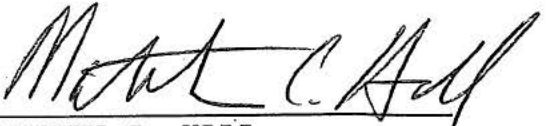
The Facility has proven that the Appellant is no longer in need of skilled nursing care. The Appellant contends that he should not be discharged at all and would at least like some more time to find living arrangements other than a homeless shelter. A discharge is appropriate due to the Appellant's improved health and ability to care for himself. The Appellant will be granted a reasonable amount of time, however, to make other arrangements.

#### DECISION


Bishop Rehabilitation and Nursing Center has established that its determination to discharge [REDACTED] was correct, and that transfer to a homeless shelter is appropriate.

1. Bishop Rehabilitation and Nursing Center is authorized to discharge [REDACTED] in accordance with its discharge plan on or after [REDACTED] 2018.
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: Albany, New York  
June 25, 2018

  
MATTHEW C. HALL  
Administrative Law Judge

To:

  
c/o Bishop Rehabilitation and Nursing Center  
918 James Street  
Syracuse, New York 13202

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