

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan
SAPA File
BOA by scan



**Department
of Health**

KATHY HOCHUL
Governor

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

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

September 15, 2021

CERTIFIED MAIL/RETURN RECEIPT

■■■■
c/o Suffolk Center for Rehabilitation
and Nursing
25 Schoenfeld Boulevard
Patchogue, New York 11772

Deidre Daniels, DSW
Suffolk Center for Rehabilitation
and Nursing
25 Schoenfeld Boulevard
Patchogue, New York 11772

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: cmg
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

Suffolk Center for Rehabilitation and Nursing

Respondent,

to discharge Appellant from a residential health care facility.

COPY

DECISION

Before: Rayanne L. Babich
Administrative Law Judge (ALJ)

Dates: June 14, 2021; June 23, 2021; July 29, 2021; and September 8, 2021

Held at: Webex videoconference

Parties: ■■■■ Appellant
c/o Suffolk Center for Rehabilitation and Nursing
25 Schoenfeld Boulevard
Patchogue, New York 11772

Deidre Daniels, Director of Social Work
Suffolk Center for Rehabilitation and Nursing
25 Schoenfeld Boulevard
Patchogue, New York 11772

JURISDICTION

A Notice of Transfer/Discharge dated ■■■■, 2021, was served on ■■■■ (Appellant) by Suffolk Center for Rehabilitation and Nursing (Facility). 10 NYCRR 415.3(i)(1)(iii)(a). The Appellant appealed the proposed discharge. 10 NYCRR 415.3(i)(2). The hearing was digitally

recorded. (R1@37:54; R2@1:27:52; R3@53:55.) The Appellant appeared and represented himself at the hearing. The Facility was represented by Deidre Daniels, Director of Social Work.

RECORD

ALJ Exhibits: I – Letter with Notice of Hearing
II – Notice of Transfer/Discharge dated [REDACTED], 2021

Facility Exhibits: 1 – Medical and Nursing progress notes
2 – Physical Therapy medical records
3 – Social Security payment amounts for 2021
4 – Physician progress note

Appellant Exhibits: A [REDACTED] Approval Notice dated [REDACTED] 2021

Facility Witnesses: Deidre Daniels, Director of Social Work
Mili Biju, Nurse Practitioner
David Justice, Physical Therapist
Gem Gonzaga, Physical Therapist

Appellant Witnesses: [REDACTED] [REDACTED]

FINDINGS OF FACT

1. Suffolk Center for Rehabilitation and Nursing is a residential health care facility. [Ex I, II.]
2. The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED], 2018 following a hospitalization due to [REDACTED]. The Facility the provided the Appellant with antibiotic therapy, along with restorative physical and occupational therapy to improve his strength and mobility. [Ex 1; R2@13:55, R2@28:38.]
3. The Appellant's current primary medical diagnoses include [REDACTED]
[REDACTED] and history of

- ██████████. He receives daily oral medications including ██████████, ██████████. [Ex 1; R2@26:17, 29:19, 31:19.]
4. Dr. Chantale Vante, the Appellant's physician, has documented in the medical record at the Facility that the Appellant no longer requires the services provided by the Facility, has been medically cleared for discharge, and his needs and stability can be maintained in the community. [Ex 4.]
 5. Mili Biju, Nurse Practitioner, has also determined that the Respondent's ██████████ and ██████████ have resolved, that he no longer requires the skilled services provided by the Facility, and that he can be safely discharged to the community. [Ex 1; R2@27:34, 29:45.]
 6. The Appellant was discharged from physical and occupational therapies on ██████████ 2020 and ██████████ 2019, respectively. The Appellant has reached his maximum potential for rehabilitation services and has met his treatment goals. He is independent in his activities of daily living and uses a rollator for walking long distances. He can manage his daily affairs and self-administer his medications. [Ex 1, 2; R2@10:36, 13:50, 15:19, 57:25, 1:09:55, 1:14:32, 1:15:22.]
 7. The Facility's discharge plan is to transfer the Appellant to the ██████████ Motel located at ██████████. [Ex II.]

ISSUE

Has the Facility met its burden of proving that the Appellant's health has improved sufficiently so he no longer needs skilled nursing care services and that its discharge plan is appropriate?

APPLICABLE LAW

1. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(i), which provides, 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; *See also* PHL 2803-z.
2. Before initiating the discharge of a resident, the facility "shall use its best efforts, including compliance with applicable federal and state regulations, to secure appropriate placement or a residential arrangement for the resident, other than temporary housing assistance." PHL 2803-z(b).
3. "Temporary housing assistance shall include but not be limited to a family shelter, a shelter for adults, a hotel, an emergency apartment, a domestic violence shelter, or a safe house for refugees." PHL 2803-z(b).
4. In planning for discharge, a facility must:
 - (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; and

(vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.
10 NYCRR 415.3(i)(1)(vi)-(vii).

5. The Facility has the burden of proving that the “discharge or transfer is/was necessary and the discharge plan appropriate.” 10 NYCRR 415.3(i)(2)(iii)(b).

DISCUSSION

The Facility has proven that the discharge is necessary because the Appellant’s health has improved sufficiently so he no longer needs skilled nursing care and has proven that its discharge plan to the [REDACTED] Motel is appropriate pursuant to 10 NYCRR 415.3(i).

Grounds for Transfer

The Appellant was admitted to the Facility on [REDACTED] 2018 for antibiotic treatment and restorative rehabilitation services following a hospitalization due to [REDACTED] and [REDACTED] [REDACTED] [Ex 1; R2@29:06.] The Facility is seeking to discharge the Appellant because it has determined he no longer requires the type of services it provides. [Ex II, 1, 4.] Nursing homes in New York State are critically needed to provide nursing care to sick, invalid, infirm, disabled or convalescent persons and must be made available for those who require this on-site, high level of continuous care. PHL §2801(2); 10 NYCRR 415.2(k).

The parties do not dispute that the Appellant no longer requires the type of services provided by the Facility. The Appellant’s medical team, Mili Biju, Nurse Practitioner and Chantale Vante, M.D., concur that the Appellant’s [REDACTED] conditions have resolved, he is medically stable and is ready for discharge, and his routine medical care can be provided in the community. [Ex 1, 4; R2@29:45.]

Physical therapists, David Justice and Gem Gonzaga, both testified that the Appellant was discharged from physical therapy on [REDACTED] 2020 because he met his rehabilitation goals and was independent in his activities of daily living. [R2@10:36, 16:20, 1:10:41.]

The Appellant testified that he is not receiving any skilled services from the Facility. [R3@30:28.] He understands his medications and how to follow up with medical providers in the community. [R3@33:32, 36:59.] The Appellant also testified that he independently attends to his daily hygiene and grooming tasks, including occasional visits to the physical therapy room to use the weights and stationary bike, and manages his personal affairs. [R3@31:20, 38:20.] Grounds for discharge have been met because the Appellant no longer requires the type of skilled services provided by the Facility. 10 NYCRR 415.3(i)(1)(i)(a)(2).

Discharge Plan

A discharge plan must “[address] the medical needs of the resident and how these will be met after discharge.” 10 NYCRR 415.3(i)(1)(vi). When discharging a resident to temporary housing, such as a motel, the Facility must demonstrate it has made its best effort to “secure appropriate placement or a residential arrangement for the resident other than temporary housing assistance.” PHL 2803-z(b).

While the discharge plan is transfer to a motel located at [REDACTED], [REDACTED], the Facility has made numerous efforts to secure other discharge locations. [Ex II; R2@48:04.] Deidre Daniels, Director of Social Work and Facility social work staff made several efforts to secure an appropriate discharge location. Ms. Daniels testified that options were explored for the Appellant to return to a family member’s home. [R2@45:57.] She also testified that a referral was submitted to the [REDACTED] in [REDACTED] of 2020, which remains pending. [R2@57:43, 58:26.] Also, a referral was made to [REDACTED]

██████████, an adult home, but the Appellant was denied admission because he did not meet the admission criteria. [R2@46:39, 48:44.] Ms. Daniels further testified that referrals to a ██████████ house in the community and to a men's shelter were offered to the Appellant, but he declined both options. [R2@47:29, 47:54.] Ms. Daniels testified that the motel was selected as the best option for discharge location. [R2@48:10.]

Ms. Biju and Ms. Daniels concur that the Appellant's placement in the motel is appropriate because it is located close to a pharmacy and the Appellant's medical providers. [R2@27:34, 32:50, 57:25.] Testimony from Ms. Gonzaga and Mr. Justice showed the Appellant can maintain his mobility in the community. [R2@20:37, 1:10:29.] This placement will also further the Appellant's goals to continue his search for an apartment in the community and to follow up with social services for any additional assistance with housing. [R2@56:05, R3@39:02, 39:53.]

The Appellant objected to the discharge location because he does not have the financial resources for the cost of the motel, but the Facility agreed to pay for up to one week at the motel. [R2@56:01, R3@50:53.] Although the Appellant does not wish to be discharged to a motel, the discharge location can appropriately meet his medical needs, provide access to medications and social services, and allow for additional time to search for his own housing in the community. [R3@29:38, 39:53, 44:32, 45:07.]

The Facility's determination to discharge the Appellant is appropriate because the Facility has proven that the Appellant's condition has improved sufficiently so that he no longer needs nursing home care. I find discharge to the motel is appropriate because the Facility has made its best effort to secure an appropriate placement that can meet the Appellant's needs. The Facility is authorized to transfer the Appellant in accordance with its discharge plan.

ORDER

The Facility is authorized to discharge the Appellant to the location identified in the Notice of Discharge dated [REDACTED] 2021 and in accordance with its discharge plan.

Dated: September 15, 2021
Albany, New York

A handwritten signature in cursive script, appearing to read "Rayanne L. Babich", written over a horizontal line.

Rayanne L. Babich
Administrative Law Judge

TO:

■■■■ Appellant
c/o Suffolk Center for Rehabilitation and Nursing
25 Schoenfeld Boulevard
Patchogue, New York 11772

Deidre Daniels, Director of Social Work
Suffolk Center for Rehabilitation and Nursing
25 Schoenfeld Boulevard
Patchogue, New York 11772