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# Department of Health

KATHY HOCHUL  
Governor

MARY T. BASSETT, M.D., M.P.H.  
Commissioner

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

March 14, 2022

## CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
c/o Nassau County University Medical Center  
2201 Hempstead Turnpike – Box 16  
East Meadow, New York 11554

Stacey Rizzuto, Social Worker  
Nassau County University Medical Center  
2201 Hempstead Turnpike – Box 16  
East Meadow, New York 11554

Jacob Blobstein, Administrator  
Nassau Rehabilitation and Nursing Center  
One Greenwich Street  
Hempstead, New York 11550

**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,

Dawn MacKillop-Soller  
Acting Chief Administrative Law Judge  
Bureau of Adjudication

DXM: 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  
NASSAU REHABILITATION AND  
NURSING CENTER

to discharge him from a residential health  
care facility.

COPY

DECISION

Hearing Before:

Sean D. O'Brien  
Administrative Law Judge

Held via

WEB EX

Hearing Date:

March 10, 2022

Parties:

Nassau Rehabilitation and  
Nursing Center  
One Greenwich Street  
Hempstead, New York 11550  
By: Jacob Blobstein, Administrator

Nassau County University Medical Center  
2201 Hempstead Turnpike-Box 16  
East Meadow, New York 11554  
By: Stacey Rizzuto, Social Worker

██████████ ██████████ pro se

JURISDICTION

By notice dated [REDACTED], 2022, Nassau 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] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) Section 415.3(i).

HEARING RECORD

Facility Exhibits: 1-4

Facility Witnesses: Henny Awendstern, R.N., Director of Nursing  
Omodell Crum-Ewing, R.N. Regional Director

Appellant's Witness: [REDACTED] [REDACTED]

Appellant Exhibit: A

Administrative Law Judge Exhibit I: Notice of Hearing

A digital recording of the hearing was made part of the hearing record via WEB EX.

ISSUE

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

FINDINGS OF FACT

Citations in parentheses refer to testimony (T) of witnesses and exhibits (Exhibit) 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 [REDACTED] years old and was admitted to the Facility on [REDACTED] [REDACTED] 2022, for short term rehabilitation with the diagnoses including [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]. As part of the intake process, the Facility was made aware the Appellant had an upcoming [REDACTED] treatment clinic appointment. (Exhibits 3,4; T Awendstern).

2. By notice dated [REDACTED] [REDACTED] 2022, the Facility determined to discharge the Appellant on that same day because

it could no longer meet his needs. (Exhibits 1, 4; T Awendstern).

3. On [REDACTED], 2022, upon the Appellant's return to the Facility from a day pass, he presented with symptoms of a [REDACTED]. The Facility discharged the Appellant to the Nassau County University Medical Center (NCUMC) emergency room. (Exhibits 3, 4; T Awendstern).

4. NCUMC admitted the Appellant where he was treated with [REDACTED] for an [REDACTED]. The Appellant tested positive for [REDACTED] and [REDACTED] NCUMC cleared Appellant for discharge back to the Facility, but the Facility refused to accept the Appellant back. (Exhibits 3, 4, A; T Awendstern).

5. The Facility did not involve the Appellant or any family members when it unilaterally discharged the Appellant to NCUMC. 10 NYCRR 415.11 and 10 NYCRR 415.3(i)(1)(vi). (Exhibit 4; T Awendstern, T [REDACTED])

6. The Appellant remains at NCUMC pending the outcome of the 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 Sections 2801(2)(3); 10 NYCRR Section 415.2(k).

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

The Facility alleges the Appellant's discharge is permissible pursuant to 10 NYCRR Section 415.3(i)(1)(i)(a)(1), which states in relevant part:

the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility....

Under the hearing procedures at 10 NYCRR Section §415.3(i)(2)(ii), the Facility bears the burden to prove a discharge necessary and the discharge plan is appropriate. Under

the New York State Administrative Procedures Act (SAPA) Section 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 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

There is a regulatory framework for residential health care facilities to follow prior to the discharge/transfer of a resident. The Facility is required to "...provide sufficient preparation and orientation to residents to ensure safe and orderly...discharge from the facility...." 10 NYCRR 415.3(i)(1)(vi). The regulations also require a post discharge plan "...**that shall be developed with the participation of the resident and his...family**, which will assist the resident to adjust to...his new living environment...." (emphasis added) 10 NYCRR 415.11(d)(3). The above cited regulatory requirements were not met by the Facility in this case and there



is no evidence of any discharge planning by the Facility to include the Appellant or his family.

In addition, as part of the intake process the Facility was made aware the Appellant had [REDACTED] [REDACTED] issues and the Appellant had an upcoming appointment at a local [REDACTED] treatment clinic. The Facility cannot now complain it cannot handle the Appellant when it knew of his [REDACTED] [REDACTED] issues upon his original admission. (Exhibit 4; T Awendstern).

In a "Dear Nursing Home Administrator" letter dated August 20, 2019, (DAL-NH 19-07) (DAL) the Department placed all residential health care facilities on notice that discharges to hospitals are not appropriate discharge locations if a resident's clinical or behavioral status endangers the health and/or safety of others at the Facility. The letter in paragraph 8 in the "Frequently Asked Questions" section goes on to state, "[a] facility's determination not to permit a resident to return **must not** be based on the resident's condition when originally sent to the Hospital." (emphasis added).

The Facility has also failed to submit any documentary or testimonial evidence from the Appellant's physician as required by regulations and the DAL. In particular, there was no physician

report stating the following: that the discharge is appropriate; the Facility cannot meet the needs of the Appellant; documentation of the Facility's efforts to meet the needs of the Appellant and the specific services the discharge location could provide. 10 NYCRR 415.3(i)(1)(ii)(a), DAL at page 2. The Facility has failed to prove the discharge was appropriate and has failed to prepare a proper discharge plan. The Appellant is now stable and has been cleared for discharge by the Hospital. (Exhibit A).

#### CONCLUSION

The Facility has failed to establish a basis to discharge the Appellant and it failed to develop a proper discharge plan for the Appellant as required by the Department's regulations.

#### DECISION

The appeal by Appellant is Affirmed.

The Facility is not authorized to discharge Appellant in accordance with the [REDACTED] 2022, Discharge Notice. The Facility 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).

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: Albany, New York  
March 14, 2022**



**Sean D. O'Brien  
Administrative Law Judge**

To: [REDACTED]  
c/o Nassau County University Medical Center  
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