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## Department of Health

**KATHY HOCHUL**  
Governor

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

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

May 4, 2023

### CERTIFIED MAIL/RETURN RECEIPT

██████ ██████  
c/o Quantum Rehabilitation and Nursing Center  
63 Oakcrest Avenue  
Middle Island, New York 11953

Paul Mullman, Director of Social Work  
Quantum Rehabilitation and Nursing Center  
63 Oakcrest Avenue  
Middle Island, New York 11953

Deirdre Borghi, Suffolk County LTC Ombudsman  
deirdre.borghi@FSL-LI.org

**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: 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

██████████ ██████████

Appellant,

from a determination by

QUANTUM REHABILITATION  
AND NURSING CENTER

to discharge her from a residential health care facility.

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COPY

DECISION

DA23-5998

Before: Tina M. Champion  
Administrative Law Judge

Held at: Videoconference via WebEx

Dates: May 3, 2022

Parties: ██████████ ██████████  
c/o Quantum Rehabilitation and Nursing Center  
63 Oakcrest Avenue  
Middle Island, New York 11953  
By: pro se

Quantum Rehabilitation and Nursing Center  
63 Oakcrest Avenue  
Middle Island, New York 11953  
By: Paul Mullman, Director of Social Work

**JURISDICTION**

By notice dated [REDACTED] 2023, Quantum Rehabilitation and Nursing Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] [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(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. A digital recording was made of the proceeding.

**HEARING RECORD**

ALJ Exhibits: I – Letter with Notice of Hearing and Transfer/Discharge Notice [REDACTED]/23)

Facility Exhibits: 1 – Invoice and Resident Funds Agreement  
2 – Smoking Agreement, Infraction Forms, Progress Notes, and Statement of Natacha Derival

Appellant Exhibits: None

Facility Witnesses: Paul Mullman, Director of Social Work  
Angela Sanfilippo, Director of Recreation

Appellant Witnesses: Appellant  
Deirdre Borghi, Suffolk County Long Term Care Ombudsman

FINDINGS OF FACT

1. The Appellant has been a resident at the Facility since [REDACTED] 2019. (Testimony [T.] Mullman.)

2. On [REDACTED] 2022, the Appellant owed the Facility \$ [REDACTED] (Facility Ex. 1; T. Mullman.)

3. From [REDACTED] 2022 through [REDACTED] 2022, the Appellant was responsible for making monthly payments of \$ [REDACTED] to the Facility, representing the Appellant's Social Security income less a [REDACTED] monthly allowance. The Appellant did not make any payments. (Facility Ex. 1; T. Mullman.)

4. The Appellant signed an Authorization and Agreement to Handle Resident Funds on [REDACTED], 2022, indicating the Appellant agreed to a "Transferring Account" with automatic transfer of care cost payments due the facility with a \$ [REDACTED] monthly allowance amount. (Facility Ex. 1; T. Mullman.)

5. From [REDACTED], 2022 through [REDACTED] 2023, the Appellant was responsible for making monthly payments of \$ [REDACTED] to the Facility, representing the Appellant's Social Security income less a \$ [REDACTED] monthly allowance. The Appellant made only one payment (\$ [REDACTED] on [REDACTED] 2022. (Facility Ex. 1; T. Mullman.)

6. The Appellant was made aware of the amount owed to the Facility per month, and invoices were provided directly to her, as well as mailed to [REDACTED] [REDACTED] her [REDACTED] and next of kin. (Facility Ex. 1; T. Mullman.)

7. As of [REDACTED] 2023, the Appellant owed the Facility \$ [REDACTED] (Facility Ex. 1; T. Mullman.)

8. On [REDACTED] 2019, The Appellant and the Facility signed a smoking agreement that set forth the smoking policies established by the Facility and obligated the Appellant to abide by those policies. (Facility Ex. 2; T. Sanfilippo.)

9. The Appellant has been found by the Facility to be in violation of its smoking policy on at least nine occasions since [REDACTED], 2022. On each occasion, the Facility provided the Appellant with a "Smoking Infraction Form" detailing the violation and noting that discharge/transfer from the Facility is to be initiated after the third infraction. (Facility Ex. 2; T. Sanfilippo.)

10. On [REDACTED] 2023, the Facility issued a Transfer or Discharge Notice to the Appellant which proposed discharge to "[REDACTED]", approximately [REDACTED] minutes away from the Facility when driving (ALJ Ex. I.)

11. The Transfer/Discharge Notice states that the Appellant will be transferred because the Appellant's needs cannot be met and the safety and health of individuals in the Facility would otherwise be endangered, all due to the Appellant's "continued non-compliance with smoking policy". The Notice also states that the Appellant will be transferred because the Appellant has failed, after reasonable and appropriate notice, to pay for her stay at the Facility. (ALJ Ex. I.)

12. The Appellant timely appealed the Facility's discharge determination.

13. The Appellant has remained at the Facility during the pendency of the appeal.

### ISSUES

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

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. (PHL § 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[i][1].)

The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(b), which states:

Transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third party insurance) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid. Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the funds.

The Facility also alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415.3(i)(1)(i)(a), which states that a resident may be transferred when:

- (1) 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;
- (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;
- (3) the safety of individuals in the facility is endangered; or
- (4) The health of individuals in the facility is endangered.

A Facility must ensure complete documentation in the resident's clinical record when a resident is discharged. When discharge is necessary because the resident's needs cannot be met or the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility, documentation shall be made by the resident's physician and, as appropriate, interdisciplinary team. When discharge is necessary due to the endangerment of the health or safety of other individuals in the facility, documentation shall be made by a physician.

(10 NYCRR 415.3[i][1][ii][b].)

Facilities are required to provide written notice of transfer or discharge that includes the following:

- (a) The reason for transfer or discharge;
- (b) The specific regulations that support, or the change in Federal or State law that requires, the action;
- (c) The effective date of transfer or discharge;
- (d) The location to which the resident will be transferred or discharged;
- (e) a statement that the resident has the right to appeal the action to the State Department of Health, which includes:
  - (1) an explanation of the individual's right to request an evidentiary hearing appealing the decision;
  - (2) the method by which an appeal may be obtained;
  - (3) in cases of an action based on a change in law, an explanation of the circumstances under which an appeal will be granted;
  - (4) an explanation that the resident may remain in the facility (except in cases of imminent danger) pending the appeal decision if the request for an appeal is made within 15 days of the date the resident received the notice of transfer/discharge;
  - (5) in cases of residents discharged/transferred due to imminent danger, a statement that the resident may return to the first available bed if he or she prevails at the hearing on appeal; and
  - (6) a statement that the resident may represent him or herself or use legal counsel, a relative, a friend, or other spokesman;
- (f) the name, address and telephone number of the State long term care ombudsman;



(g) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act;

(h) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(10 NYCRR 415.3[i][1][v].)

Facilities are also required to "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."

(10 NYCRR 415.3[i][1][vi].)

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

## DISCUSSION

### Reason for Discharge

The Appellant does not dispute the amount due to the Facility, and she acknowledges that she received monthly invoices reflecting her balance. The Appellant also acknowledges her receipt of social security payments each month, with the exception of one payment in [REDACTED] 2022 that was transmitted to the Facility at her direction and five payments that she states were never received. The Appellant also states that, after meeting with Ombudsman Deirdre Borghi approximately two weeks ago, she immediately authorized her social security payments to be sent directly to the Facility going forward. The Appellant and Ms. Borghi testified that the Facility indicated that it would not pursue the discharge appeal if the Appellant relinquished her social

security payments. Upon inquiry as to how the Appellant intends to handle the outstanding balance, the Appellant stated that she has no idea how she would pay that amount.

Mr. Mullman testified that he does not recall telling the Appellant that the Facility would discontinue its efforts to discharge the Appellant if she signed over her payments at this point. He also testified that the person in the Business Office who met with the Appellant and Ms. Borghi would not have the authority to make that statement as she is not involved with discharge planning. Mr. Mullman testified that the Facility has no assurance that the Appellant will not contact the Social Security Office and cancel her authorization for direct payment to the Facility, particularly since she has done this in the past.

Regardless of what, if anything, was discussed between the parties about the Appellant's ability to stay at the Facility, the Facility has not withdrawn its [REDACTED] 2023 Notice of Transfer or Discharge. The ALJ is aware of a [REDACTED], 2020 Decision from the Bureau of Adjudication that was made after an [REDACTED] 2020 hearing between the parties in which the Facility sought discharge of the Appellant for nonpayment. In that matter, the Facility was authorized to discharge the Appellant in accordance with its prior discharge plan, which it ultimately did not do.

The Facility has shown that it has provided reasonable and appropriate notice to the Appellant of the amounts due, and the Appellant has failed to pay for her stay. The Appellant's latest authorization for her social security payments to be sent to the Facility does not negate the prior nonpayment or significant outstanding balance. Therefore, discharge for nonpayment is permissible.

Given the permissibility of discharge for nonpayment, it is not necessary to reach a determination on the Facility's other three bases for discharge, all of which relate to the Appellant's alleged continued non-compliance with the Facility's smoking policy. However, it is noted that the Appellant candidly acknowledged multiple violations of the smoking policy – smoking in areas not

designated for smoking, possession of smoking paraphernalia when not permitted, and smoking independently despite being in the group smoking program. Had the Facility offered into evidence complete documentation in the Appellant's clinical record as outlined in 10 NYCRR 415.3(i)(1)(ii)(b), which includes documentation by a physician, the Facility may have been able to meet its burden of proof on the other three bases as well.

Discharge Location

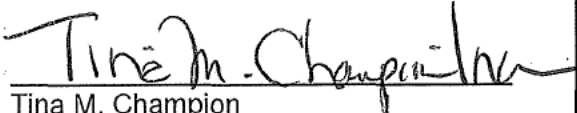
The Facility has proposed discharge to "██████████." The proposed discharge location is another skilled nursing facility and is ████████ in ████████. The Appellant argues that the Facility is not an appropriate discharge location. She contends that she would be ██████████ if she has to transfer to another facility, noting that she has wounds on her ██████ and that she is close to getting housing through a community housing program. The Appellant's assertions are unpersuasive. The proposed discharge location is another skilled nursing facility and there has been no evidence to show that it cannot properly care for the Appellant's medical needs. Further, with respect to the Appellant's housing concerns, the housing list that Appellant is currently on is managed by an independent agency and is not controlled by either the Facility or the proposed discharge location. The Facility has met its burden to show that the discharge location is appropriate for the Appellant.



**DECISION**

Quantum Rehabilitation and Nursing Center has established that its' determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. Quantum Rehabilitation and Nursing Center is authorized to immediately discharge the Appellant in accordance with its discharge plan.
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  
May 4, 2023

  
Tina M. Champion  
Administrative Law Judge

TO:   
c/o Quantum Rehabilitation and Nursing Center  
63 Oakcrest Avenue  
Middle Island, New York 11953  


Paul Mullman, Director of Social Work  
Quantum Rehabilitation and Nursing Center  
63 Oakcrest Avenue  
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