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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 3, 2023

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o University Rochester Medical Center  
601 Elmwood Avenue  
P.O. Box 650  
Rochester, New York 14624

Peg Bierley  
University Rochester Medical Center  
601 Elmwood Avenue  
P.O. Box 650  
Rochester, New York 14624

Kevin Dougherty, NHA  
Maple City Rehabilitation and Nursing Center  
434 Monroe Avenue  
Hornell, New York 14843

**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 /ny*

Natalie J. Bordeaux  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB: 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  
MAPLE CITY REHABILITATION  
AND NURSING CENTER  
to discharge him from a residential health  
care facility.

COPY

DECISION  
BOA#6004

Hearing Before:

Sean D. O'Brien  
Administrative Law Judge

Held via

WEB EX video conference

Hearing Date:

May 2, 2023

Parties:

Maple City Rehabilitation and Nursing  
434 Monroe Avenue  
Hornell, New York 14843  
By: Kevin Dougherty,  
Nursing Home Administrator

██████████ ██████████ pro se

Appearance:

University of Rochester Medical Center  
601 Elmwood Avenue  
P.O. Box 650  
Rochester, New York 14624  
By: Peg Bierley, Associate Director of  
Social Services

JURISDICTION

On [REDACTED] [REDACTED], 2023, Maple City Rehabilitation and Nursing Center(the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [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 Witness: Christel Sylvester, Director of Nursing

Appellant's Witness: [REDACTED] [REDACTED]

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.

1. The Appellant is a [REDACTED]-year old male who was admitted to the Facility on [REDACTED] [REDACTED] 2023, from [REDACTED] Hospital ([REDACTED] (Exhibit 1; T. Sylvester.)

2. On [REDACTED] [REDACTED], 2023, the Facility determined to discharge/transfer the Appellant because he is a [REDACTED] [REDACTED] [REDACTED] from the State of [REDACTED] and the Facility's policy is not to accept [REDACTED] [REDACTED]. (Exhibits 1, 2, 3, 4; T. Sylvester.)

3. The Appellant was discharged/transferred from the Facility on [REDACTED] [REDACTED], 2023, to the University of Rochester Medical Center (URMC), emergency room, 601 Elmwood Avenue, Rochester, New York. URMC cleared the Appellant on that same

day for discharge back to the Facility, but the Facility refused to accept the Appellant back. (Exhibit 3; T. Sylvester.)

4. The Facility did not involve the Appellant or his family, in the discharge planning process and in particular the determination to unilaterally discharge/transfer the Appellant to URMC.

5. The Appellant remains at URMC 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/transferred 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)(3), which states in relevant part

...the safety of individuals in the facility is  
endangered...

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

The Appellant was admitted to the Facility on [REDACTED] 2023, from [REDACTED] [REDACTED] [REDACTED] [REDACTED] New York, after a long hospitalization for [REDACTED]. (T. Sylvester, T. [REDACTED])

The policy of the Facility is not to accept [REDACTED] [REDACTED] as residents. The routine practice of the Facility is to review the New York State [REDACTED] [REDACTED] [REDACTED]) when reviewing new Facility admissions. In the Appellant's case the intake social worker reviewed the Registry where the Appellant's name did not appear, so the Appellant was admitted. (T. Sylvester.)

However, in later conversations with the Facility's staff, the Appellant disclosed he was a [REDACTED] [REDACTED] out of the State of [REDACTED]. This disclosure was confirmed by the Facility's Nursing Home Administrator and the Director of Nursing who checked the [REDACTED] [REDACTED] [REDACTED]. Once the Appellant's [REDACTED] status was confirmed the Facility staff discharged/transferred the Appellant, without developing a discharge plan, to the URMC emergency room. (Exhibit 3.)

There is a regulatory framework for skilled nursing 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). These regulatory requirements were not met by the Facility.

In addition, per a "Dear Nursing Home Administrator" letter dated August 20, 2019, and re-issued in October 2022, (DAL-NH 19-07) 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).

In the present case, the Facility never commenced a proper discharge planning process to another skilled nursing facility or treatment facility which would address the Appellant's physical conditions. The Facility did not attempt to do discharge planning for the Appellant. Rather, the Facility took a short-term response of discharging/transferring Appellant to a hospital in reaction to the Appellant's status as a [REDACTED]

The Facility also failed to provide the discharge/transfer notice to the Appellant's representative, or the Long Term Care Ombudsman Office as required by regulations and issued guidance. 10 NYCRR 415.3(i), DAL 19-07. In addition, the Facility's purported basis for the Appellant's discharge/transfer was that the safety of individuals was at risk due to the Appellant's [REDACTED] status. In discharge/transfer cases where the safety of other residents is at risk a physician's review and approval of the discharge and discharge plan is necessary. 10 NYCRR 415.3 (i) (1) (ii) (b). That was not done in this case.

Simply put, the Facility admitted the Appellant to the Facility due to its failure to properly screen the Appellant pursuant to its policy of not accepting [REDACTED]. The Facility, upon finding the Appellant's status as an out of state [REDACTED], improperly discharged/transferred the Appellant without a discharge plan. The regulations allow for the discharge/transfer of residents who are a threat to the health and safety of others, but the Facility failed to follow the regulatory requirements for a proper discharge.

CONCLUSION

The Facility failed follow regulations in 10 NYCRR 415.3 setting the forth the requirements of discharging a resident.


DECISION

The appeal by Appellant is Affirmed.

The Facility is not authorized to discharge/transfer the Appellant. 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  
May 3, 2023

  
\_\_\_\_\_  
Sean D. O'Brien  
Administrative Law Judge

To: Kevin Dougherty, Administrator  
Maple City Rehabilitation and Nursing Center  
434 Monroe Avenue  
Hornell, New York 14843

Peg Bierley, Associate Director of Social Work  
University of Rochester Medical Center  
601 Elmwood Avenue  
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