

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan  
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## Department of Health

**KATHY HOCHUL**  
Governor

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

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

June 16, 2023

### CERTIFIED MAIL/RETURN RECEIPT

■■■■  
c/o New Franklin Rehabilitation and Nursing  
142-27 Franklin Avenue  
Flushing, New York 11355

Derek Murray, NHA  
New Franklin Rehabilitation and Nursing  
142-27 Franklin Avenue  
Flushing, New York 11355

Jason Atlas, Esq.  
Schwartz Sladkus Reich Green Atlas, LLP  
444 Madison Avenue  
New York, New York 10022

**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

In the Matter of an Appeal, pursuant to  
10 NYCRR 415.3, by

■■■■

Appellant,

from a determination by

**New Franklin Center for  
Rehabilitation and Nursing,**

Respondent,

to discharge him from a residential  
health care facility.

COPY

**DECISION  
AFTER HEARING**

#DA23-6045

Hearing before:

John Harris Terepka  
Administrative Law Judge

Held at:

New York State Department of Health  
by videoconference  
June 16, 2023

Parties:

New Franklin Center for Rehabilitation and Nursing  
Derek Murray, administrator  
142-27 Franklin Avenue  
Flushing, New York 11355  
[dmurray@franklinnh.net](mailto:dmurray@franklinnh.net)

By: Jason B. Atlas, Esq.  
Schwartz Sladkus Reich Greenberg Atlas LLP  
444 Madison Avenue  
New York, New York 10022  
[jatlas@ssrga.com](mailto:jatlas@ssrga.com)

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New Franklin Center for Rehabilitation and Nursing

### JURISDICTION

New Franklin Center for Rehabilitation and Nursing (the Respondent), a residential health care facility (RHCF) subject to Article 28 of the Public Health Law, determined to discharge █ █ (the Appellant) from care and treatment in its nursing home. The Appellant appealed the discharge determination to the New York State Department of Health pursuant to 10 NYCRR 415.3(i).

### SUMMARY OF FACTS

1. Respondent New Franklin Center for Rehabilitation and Nursing is a residential health care facility, specifically a nursing home within the meaning of PHL 2801.2 and 10 NYCRR 415.2(k), located in Flushing, New York.
2. Appellant █ █ age █ was admitted as a resident in █ 2022 for short term rehabilitation after hospitalization for a █ (Exhibit 1.)
3. By notice dated █ 2023, the Respondent advised the Appellant of its determination to discharge him on █ █, 2023 on the grounds that his health has improved sufficiently that he no longer needs the services provided by the facility. (Exhibit ALJ I.)
4. The Appellant is not in need of nursing home care. He is medically stable, independent with all care needs and activities of daily living, and completed facility therapies in █ 2023. He regularly leaves the nursing home on his own, and his medical needs can be met on an outpatient basis. (Exhibits 3, 4, 5, 6.)
5. The Appellant's treating physician at the facility has determined and documented in the facility record that the Appellant is not in need of nursing home care and that discharge to a shelter in the community is medically appropriate. (Exhibit 3.)

6. The discharge notice advised the Appellant he would be discharged to the New York City shelter system, at [REDACTED], New York. He meets shelter criteria and has been determined by the shelter system to be appropriate for shelter. (Exhibits 7, 8.) The discharge plan includes arrangements for transportation to the shelter, provision of necessary equipment and medication, and medical care referrals as needed. (Testimony, Tseng, 1h23-24m.)
7. The Appellant remains at New Franklin Center pending the outcome of this hearing.

#### ISSUES

Has the Respondent established that the Appellant's discharge is authorized and that the discharge plan is appropriate?

#### APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, is a residential facility providing nursing care to sick, invalid, infirm disabled or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital. PHL 2801; 10 NYCRR 415.2(k). Transfer and discharge rights of nursing home residents have been codified in Public Health Law 2803-z and set forth at 10 NYCRR 415.3(i).

A resident may be transferred when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that 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. 10 NYCRR 415.3(i)(1)(i)(a)((2)). The facility must 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). The facility must also permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(i)(1)(vii). The facility has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

### DISCUSSION

The Respondent presented documents (Exhibits 1-8) and testimony from Debbie Tseng, director of social service. The Appellant, who was provided with a [REDACTED] interpreter, testified and presented one witness, [REDACTED]. The [REDACTED] 2023 notice of hearing and [REDACTED] 2023 discharge notice are in evidence as ALJ Exhibit I. A digital recording of the hearing was made. (1h32m.)

The Respondent has established that the Appellant is no longer in need of nursing home care. He was discharged from physical therapy in [REDACTED] 2023. (Exhibit 5.) He ambulates independently with a rollator and is independent with all activities of daily living (ADL). He is able to and does regularly leave the nursing home during the day. (Exhibit 4.) His treating physician at the facility, Dr. Lumibao, evaluated him on [REDACTED] [REDACTED] 2023 and documented in a medical progress note that "He is cleared by rehabilitation to be discharged to the community and he is medically cleared for discharge to shelter." (Exhibit 3.) The Appellant presented no medical evidence to controvert the opinion of the Respondent's care team that he does not require nursing home care. Appropriate grounds for discharge have been established.

The Appellant objects to the Respondent's discharge plan to refer him to a shelter. The Respondent has worked with him to find other discharge options, without success. Efforts to develop a plan have included nursing home and assisted living facility referrals, but he has not been accepted anywhere. (Exhibits 2, 6.) The Appellant has not identified other options for the Respondent to explore, nor has he demonstrated significant efforts of his own to develop a plan.

The discharge notice was provided to the Appellant on ██████████, 2023 and he requested this hearing May 12. On June 9, 2023, the first date scheduled for this hearing, he requested a one week postponement to continue his effort to secure admission to another nursing home. Although the Respondent has already sent three referrals to that facility, which were all rejected, the hearing was postponed to June 16 in order to give the Appellant the time he requested. On June 16, he incorrectly asserted an entitlement to be provided with appointed counsel, and then requested, for the first time, a further postponement of the hearing to obtain legal representation. He also suggested he should have up to seven months longer to remain at the nursing home while waiting for social security benefits to be approved, at which time he said he would leave voluntarily. Further postponement of this discharge is not appropriate for any of these reasons.

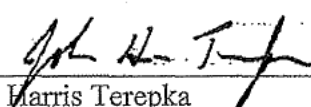
The Respondent has complied with its obligation to permit the Appellant to participate in deciding where he will reside after discharge by making efforts to include him in discharge planning and to assist him in finding a place to live. Resort was had to a shelter only after reasonable efforts by the Respondent to develop another plan, with the Appellant's participation, were unsuccessful.

The Appellant is not entitled to remain in nursing home care he no longer requires. In the absence of a demonstrable and realistic plan for another discharge option, referral to a shelter for which he meets eligibility criteria is appropriate. Further housing assistance and social services resources can be made available to him at the shelter. Under these circumstances, the Respondent's discharge plan is appropriate and the Respondent is entitled to proceed with it.

**DECISION:** Respondent New Franklin Center for Rehabilitation and Nursing has established valid grounds for the discharge of Appellant ██████████ and has established that its discharge plan is appropriate. The Respondent is authorized to discharge the Appellant in accordance with the ██████████ 2023 discharge notice.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York  
June 16, 2023

  
\_\_\_\_\_  
John Harris Terepka  
Administrative Law Judge  
Bureau of Adjudication