



# Department of Health

ANDREW M. CUOMO  
Governor

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

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

May 9, 2018

**CERTIFIED MAIL/RETURN RECEIPT**

Renee Jeffrey, Director of Social Work  
Rockaway Care Center  
353 Beach 48<sup>th</sup> Street  
Far Rockaway, New York 11691

[REDACTED]  
c/o Rockaway Care Center  
353 Beach 48<sup>th</sup> Street  
Far Rockaway, New York 11691

Juliana Nunez  
CIDNY  
8002 Kew Gardens Road  
Kew Gardens, New York 11415

**RE: In the Matter of [REDACTED] - 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* / CAC  
James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cac  
Enclosure

**STATE OF NEW YORK  
DEPARTMENT OF HEALTH**

---

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

[REDACTED]

Appellant,

from a determination by

**ROCKAWAY CARE CENTER,**

Respondent,

to discharge him from a residential health care facility.

---

**COPY**

**DECISION**

**Hearing Before:**

Ann H. Gayle  
Administrative Law Judge

**Held at:**

Rockaway Care Center  
353 Beach 48th Street  
Far Rockaway, New York 11691

**Hearing Date:**

April 27, 2018

**Parties:**

Rockaway Care Center  
By: Renee Jeffrey, Director of Social Work

[REDACTED]

*Pro Se, with assistance of Ombudsman.*

Pursuant to Public Health Law ("PHL") §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("10 NYCRR") §415.2(k), a residential health care facility or nursing home such as Rockaway Care Center ("Respondent" or "Facility") 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.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(h). Respondent determined to discharge [REDACTED] ("Appellant" or "Resident") from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h)(1)(i)(a)(2) and (4) which provides, in pertinent part:

(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;

... or

(4) the health of individuals in the facility is endangered.

Appellant appealed the discharge determination to the New York State Department of Health, and a hearing on that appeal was held. Pursuant to 10 NYCRR §415.3(h)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

Appellant and Juliana Nunez, Ombudsman, testified for Appellant. The following Facility representatives testified for Respondent: Renee Jeffrey—Director of Social Work, Mary Jean Szezypczyk, R.N.—Assistant Director of Nursing, Abiola Fernandez, R.N.—Director of Nursing, and Jody Bonura—Administrator.

A digital recording of the hearing was made part of the record, and the following documents were accepted into evidence by the Administrative Law Judge ("ALJ") as ALJ, Facility, and Resident Exhibits:

ALJ:

- I: Notice of Hearing with the Facility's 2018 Discharge Notice attached
- II: Letter dated , 2018
- III: Facility's 2018 Amended Discharge Notice

Facility:

- 1: progress note dated /17
- 2: Primary care physician ("PCP") progress note date /18
- 3: PCP's /18 note marked for identification but not accepted into evidence
- 4: Social work progress notes dated
- 5: PT annual note date /18
- 6: Medications and orders for 2018
- 7: ADLs dated /18
- 8: Clinic appointment sheet
- 9: Copies of photos of confiscated items – 4 pages

Resident:

- A: /18 letter from center's social worker
- B: /18 letter from Appellant's community PCP
- C: /18 letter from Appellant's community PCP
- D: Instructions for Appellant's planned surgery
- E: Instructions and dates of upcoming medical appointments
- F: Additional upcoming medical appointments
- G: /18 letter from Appellant's health insurance carrier
- H: Additional upcoming medical appointments.
- I: /18 encounter date with Dr. Shapiro

ISSUE

Has Rockaway Care Center established that the transfer is necessary and the discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony ("T") of witnesses and exhibits ("Ex") found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Respondent, Rockaway Care Center, is a residential health care facility located in Far Rockaway, New York. (Ex I)

2. Appellant, age [REDACTED] was admitted to the Facility from [REDACTED] on [REDACTED] 2017. Appellant's medical conditions include [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

which Appellant receives numerous medications and treatments. Appellant is alert and oriented and independent in his ADLs (activities of daily living). (Ex 1; Ex 6; Ex B; T Jeffrey, Szezypczyk, Fernandez, Appellant)

3. By notice dated [REDACTED], 2018, Respondent advised Appellant that it had determined to discharge him on the grounds that his health has improved sufficiently so that he no longer needs the services provided by the Facility. By amended notice dated [REDACTED] 2018, Respondent added the grounds that Appellant's bringing [REDACTED] and cigarettes into the facility jeopardizes the health and well-being of Appellant and other residents of the Facility. (Ex I; Ex II)

4. Respondent's discharge plan in its [REDACTED], 2018 transfer/discharge notice was to discharge Appellant to [REDACTED]. Respondent's discharge plan in its [REDACTED] 2018 amended transfer/discharge notice was to discharge Appellant to the [REDACTED] Shelter ("Shelter") located at [REDACTED] (Ex I; Ex II)

5. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's medical director, that discharge to the community, including the Shelter, is appropriate for Appellant. It is the profession opinion of Appellant's community PCP and Appellant's social

worker at [REDACTED] that discharge to the Shelter  
“would lead to serious health complications or death.” (Ex 2; Ex A; Ex B; T. Jeffrey,  
Szczypczyk, Fernández, Appellant)

6. Appellant has remained at Rockaway Care Center pending the outcome of this  
proceeding.

### DISCUSSION

The evidence presented by the parties demonstrated both that Appellant’s behavior  
endangered his health or the health of individuals in the facility and that his health has improved  
sufficiently so that he no longer needs skilled care. The evidence, however, did not demonstrate  
that discharge to the Shelter is appropriate for Appellant.

Approximately [REDACTED]

[REDACTED]  
[REDACTED] were found hidden in Appellant’s closet during a search of Appellant’s room  
on [REDACTED] 2018. On [REDACTED] 2018, Respondent’s body search of Appellant found [REDACTED]  
[REDACTED] and a box of menthol 100’s cigars (which Respondent identified as “cigarettes” in its  
amended transfer/discharge notice) hidden in Appellant’s [REDACTED]. Appellant testified that he  
received the prescription medications from the pharmacy at the [REDACTED] center. Appellant further  
testified that until the end of [REDACTED] 2018, he would have [REDACTED] per week when he  
was alone in his room and that he would take a few puffs of a cigar before he entered the [REDACTED]  
center three times per week, but he has since ceased this behavior. Hiding, keeping, and using  
any amount of [REDACTED] and [REDACTED] in the Facility placed Appellant’s and other  
residents’ health in danger, especially given the [REDACTED]

Appellant harbored in the Facility. Respondent proved that Appellant's behavior endangered his health or the health of individuals in the Facility.

Respondent also proved that Appellant's health has improved sufficiently so that he no longer needs skilled care; Appellant independently coordinates the treatment he requires and receives in the community and he is independent with his ADLs. Appellant, who is transported, unescorted, to the [redacted] center in the community three times per week, would be able to continue to receive this (and his other) medical treatment if he were discharged from the Facility to the community.

The community discharge location identified in the Facility's amended transfer/discharge notice is the Shelter. Appellant was [redacted] (since approximately 2012) and he lived in the Shelter prior to his admission to the Facility. Priya Pai, LMSW [redacted] Social Worker at the [redacted] center wrote, in part,

Due [to] the nature of [Appellant's] multiple medical and physical needs, [he] should continue residing at Rockaway Care Center ... based upon his [redacted] medical conditions; including the need for [redacted] treatments. If [Appellant] were to return to his shelter, he would not have sufficient access to healthy foods for an [redacted] diet as well as access to proper medical care for his [redacted] treatments, which would all lead to serious health complications or death. Therefore, by receiving appropriate care from Rockaway Care Center, [Appellant's] well-being, quality of life, and above all safety in the community would be greatly enhanced. (Ex A)

Shivkumar Tejwani, M.D., Appellant's community PCP, agrees. Dr. Tejwani wrote, in part, "(Attached letter from [redacted] Social Worker Priya Pai detailing his circumstances and needs. I agree with her assessment)" (Ex B). The testimony of the Facility's Director of Nursing, Abiola Fernandez, R.N., confirms Dr. Tejwani's and Ms. Pai's concerns. Ms. Fernandez testified that Appellant was [redacted]" and needed much assistance with his ADLs when he was.

admitted to the Facility in [REDACTED] 2017. Appellant lived in the Shelter prior to his admission to the Facility.

Appellant testified that when Shelter residents are out in the community and do not return to the Shelter by a designated time, the contents of the resident's locker are confiscated and not returned to the resident upon his/her return. To illustrate his position that the Shelter is not safe or appropriate for him, Appellant testified that when he became ill in the community and was brought by ambulance and admitted to the hospital at a time when he was a resident of the Shelter, his [REDACTED] medications, which he was required to keep in his locker at the Shelter, were confiscated and not returned to him. Appellant is concerned that this would happen again if he is discharged to the Shelter. Ms. Pai's points address this; she wrote, in part,

[Appellant] receive [REDACTED] treatments three days a week (Tuesdays, Thursdays and Saturdays) for approximately 4 hours per treatment. Due to the nature of his [REDACTED] medical conditions, which are incurable, [Appellant] must comply with a specialized treatment regime, which includes receiving all [REDACTED] treatments as ordered, adhering to a [REDACTED] diet and closely monitoring his fluid intake, as well as, taking all his medications as prescribed. Due to the unpredictability of some patients' reactions to their treatments, at times, [Appellant] may require extra time after his treatment due to fluctuations with his blood pressure. He may also experience periodic episodes of [REDACTED] which are common side effects for patients receiving [REDACTED] treatment. (Ex A)

Again, Appellant's PCP agrees with Ms. Pai's assessment.

Appellant's concerns about residing in the Shelter, combined with Ms. Pai's and Dr. Tejwani's statements, and with Ms. Fabiola's testimony that Appellant was [REDACTED] and needed much assistance with his ADLs when he was admitted to the Facility in [REDACTED]



2017 (having resided in the Shelter prior to that admission) confirm that discharge to the Shelter is not an appropriate or safe discharge plan for Appellant.

### CONCLUSION

Respondent has proven that Appellant's health has improved sufficiently and that his current conditions are conditions that, generally, can be treated in the community. Respondent also proved that the health of individuals in the facility was endangered by Appellant's behavior. But Respondent has not proven that the discharge location, the Shelter, is appropriate for Appellant. Dr. Tejwani and Ms. Pai believe that if Appellant "were to return to his shelter, he would not have sufficient access to healthy foods for an [redacted] diet as well as access to proper medical care for his [redacted] treatments; which would all lead to serious health complications or death." Appellant was "[redacted]" upon his admission to the Facility after living in the Shelter. Appellant should not be discharged back to the Shelter at this time. Appellant seemed to understand how taking medications, even prescription medications, without Respondent's knowledge and ability to coordinate his medication regimen, endangers his health and how storing medications in [redacted] in his room endangers others' health and safety, and he indicated that he no longer does this. Appellant must continue to abide by the Facility's guidelines.

### DECISION

I find that the discharge is not necessary at this time, and the discharge plan is not appropriate.

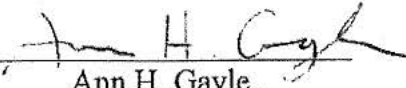
The appeal by Appellant, [redacted], is therefore GRANTED.

Respondent, Rockaway Care Center, is not authorized to discharge Appellant, [redacted], in accordance with its [redacted] 2018 transfer/discharge notice or its [redacted] 2018 amended transfer/discharge notice.

██████████ Rockaway Care Center

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: New York, New York  
May 9, 2018

  
Ann H. Gayle  
Administrative Law Judge

TO: ██████████  
c/o Rockaway Care Center  
353 Beach 48th Street  
Far Rockaway, New York 11691

Renee Jeffrey, Director of Social Services  
Rockaway Care Center  
353 Beach 48th Street  
Far Rockaway, New York 11691

Juliana Nunez  
CIDNY  
8002 Kew Gardens Road  
Kew Gardens, New York 11415