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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

July 10, 2023

**CERTIFIED MAIL/RETURN RECEIPT**

██████████  
c/o Schaffer Extended Care Center  
16 Guion Place  
New Rochelle, New York 10802

██████████ SW  
Schaffer Extended Care Center  
16 Guion Place  
New Rochelle, New York 10802

**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: cmg  
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

**Schaffer Extended Care Center,**  
Respondent,

to discharge him from a residential  
health care facility.

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Hearing Before: Natalie J. Bordeaux  
Administrative Law Judge

Held via: WebEx videoconference

Hearing Date: July 6, 2023

Parties: Schaffer Extended Care Center  
16 Guion Place  
New Rochelle, New York 10802  
By: ██████████ Social Worker

██████████  
*Pro Se*

**COPY**

**DECISION**

**JURISDICTION**

Schaffer Extended Care Center (Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant). The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 NYCRR § 415.3(i).

**HEARING RECORD**

- Facility witnesses: [REDACTED] Social Worker  
Cynthia Novak, Director of Rehabilitation  
Jacqueline Reid, Social Work Manager
- Facility exhibits: 1-7
- Appellant witnesses: [REDACTED] Appellant  
Marnie Mallah, Tri-County LTC Ombudsman Program
- Appellant exhibit: A
- ALJ exhibit: I

A digital recording of the hearing was made (1:11:22 in duration).

**ISSUES**

Has Schaffer Extended Care Center established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

**FINDINGS OF FACT**

1. The Appellant is a [REDACTED]-year-old male who was transferred from [REDACTED] Hospital to the Facility on [REDACTED], 2023 for short-term rehabilitation after sustaining [REDACTED] of the [REDACTED] and [REDACTED]. (Exhibits 2, 3.)
2. During his stay at the Facility, the Appellant received physical and occupational therapy five times per week and speech therapy three times per week. He was discharged from all

therapies by [REDACTED] 2023, when rehabilitation staff determined that he had reached his maximum functional ability. (Exhibit 6; Recording @ 24:34.)

3. The Appellant does not currently receive any medical or therapeutic services at the Facility. (Exhibit 6; Recording @ 33:18.)

4. The Appellant independently performs all activities of daily living (ADLs). He ambulates with assistive devices and can self-administer his medications. (Exhibit 3; Recording @ 16:34; 18:00; 30:40; 34:41.)

5. By notice dated [REDACTED] 2023, the Facility advised the Appellant of its determination to discharge him on [REDACTED] 2023 because his health has improved sufficiently so that he no longer requires the services provided by the Facility. The notice advised the Appellant that he would be discharged to the [REDACTED] Shelter, located at [REDACTED]. (Exhibit 1.)

6. The Appellant's clinical record contains documentation from his physician and social worker that the Appellant's condition has improved such that he no longer requires the services of a nursing home, and that discharge to a shelter is appropriate. (Exhibits 3, 5; Recording @ 17:58; 33:18; 35:34.)

7. On June 23, 2023, the Appellant requested this hearing to contest the Facility's discharge determination.

8. The Appellant remains at the Facility pending the outcome of the hearing.

#### APPLICABLE LAW

A residential health care facility (also referred to in the 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 §§ 2801(2)-(3); 10 NYCRR § 415.2(k).

10 NYCRR § 415.3(i) describes the transfer and discharge rights of residential health care facility residents. The regulation states, in pertinent part:

(1) With regard to the transfer or discharge of residents, the facility shall:

(i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility:

(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.

When the facility transfers or discharges a resident because the resident's health has improved sufficiently that the resident no longer needs the services provided by the facility, the facility shall ensure that the resident's clinical record contains complete documentation made by the resident's physician and, as appropriate, the resident's interdisciplinary care team. 10 NYCRR § 415.3(i)(1)(ii)(a). The residential health care facility must prove that the discharge was necessary and the discharge plan appropriate. 10 NYCRR § 415.3(i)(2)(iii)(b); State Administrative Procedure Act § 306(1).

### DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] 2023 for short-term rehabilitation after his most recent hospitalization for [REDACTED] of the [REDACTED] and [REDACTED]. (Exhibits 2, 3; Recording @ 24:10.) His admission was for sub-acute rehabilitation services, with the goal of restoring his abilities prior to his [REDACTED] 2023 hospitalization. (Recording @ 24:10.)

At the Facility, the Appellant received physical, occupational and speech therapy. He was discharged from all therapies after attaining his maximum functional level. (Exhibits 3, 6; Recording @ 24:34; 33:18.) The Appellant independently performs all ADLs and can administer his own medications. (Recording @ 30:40; 34:41.) The Appellant ambulates 150 feet with a rolling walker. (Exhibit 3; Recording @ 47:03.)

The Appellant contended that he continues to have trouble with his [REDACTED] cannot walk far, and needs additional physical therapy. (Recording @ 36:18; 36:35; 52:00.) Although the Appellant was admitted to the Facility after a hospitalization concerning his [REDACTED], he claimed that his other diagnoses relating to a [REDACTED] in [REDACTED] 2023 and injuries sustained during a surgery in [REDACTED] 2022, affect [REDACTED]. (Recording @ 37:00; 41:25.) While the Appellant asserted that he continues to need physical therapy services, the Appellant himself denied such services on two occasions in [REDACTED] 2023. (Exhibit 6; Recording @ 33:18.)

The Appellant acknowledged that he has walked 150 feet with a rolling walker but said that occurred during a physical therapy session with his wheelchair and with his wheelchair positioned behind him. (Recording @ 42:43.) The Appellant testified that he fell on [REDACTED] 2023 while using the rolling walker to go to the bathroom. However, he then admitted that he fell because his bed wheels were unlocked, and the bed moved when he attempted to transfer himself. (Recording @ 44:42.) The event note from the Facility's doctor dated [REDACTED], 2023 corroborated this testimony and also noted that the Appellant appeared [REDACTED] and [REDACTED] of [REDACTED] at the time he fell. While the Appellant disputed the contents of that report, he acknowledged that he had not fallen because he was unable to effectuate a transfer to and from his bed independently. (Exhibit 7; Recording @ 1:05:25; 1:06:45.)



The Appellant testified that he has not sustained other falls because he stays in his wheelchair, and chooses not to use the rolling walker that he has been provided. (Recording @ 45:08; 45:29.) The Facility's Director of Rehabilitation testified that, based on her review of the physical therapy discharge note, the Appellant is safely able to ambulate using the rolling walker for distances of [REDACTED] feet, and that the Appellant's use of his wheelchair is a "personal preference." (Recording @ 47:20.)

The Appellant and Ombudsman Marnie Mallah also underscored the Appellant's other physical and mental health issues. The Appellant explained that he sustained [REDACTED] on his [REDACTED] from [REDACTED] used after his [REDACTED] surgery and these [REDACTED] have contributed to his [REDACTED] (Recording @ 39:00.) The Ombudsman testified that the Appellant has been prescribed [REDACTED] a pain medication routinely prescribed to patients receiving outpatient care. (Recording @ 57:49.) The Ombudsman also stated that the Appellant recently [REDACTED] but then qualified her statement by noting that the [REDACTED] risk was related to the Appellant's diet. (Recording @ 27:40, 32:38, 49:49.) The Appellant stated that he has [REDACTED] since his [REDACTED] 2023 [REDACTED] and that he has found a comfort level at the Facility. (Recording @ 37:50.)

While the testimony provided by and on behalf of the Appellant is sympathetic, no information provided refuted the Facility's evidence. (Exhibit 3, 5, 6; Recording at 33:18.) The Appellant's needs can be managed as an outpatient. The Facility has established that the Appellant's health has improved sufficiently that he no longer requires the services provided by the Facility. (Exhibits 3, 6.)

With respect to the proposed discharge plan, the Facility used its best efforts, including compliance with applicable federal and state regulations, to secure appropriate placement or an



appropriate residential arrangement for the Appellant, other than temporary housing assistance. Public Health Law § 2803-z(1)(b). Before resorting to shelter placement, the Facility confirmed that the Appellant could not return home where he previously resided with his [REDACTED] and could not live with his [REDACTED] (Exhibit 5; Recording @ 16:19.) The Appellant confirmed that he has no home available to him. (Recording @ 53:30.)

The Facility also worked with the Appellant to attempt placement for the Appellant at an assisted living facility. (Exhibit 5; Recording @ 17:15.) The Facility contacted approximately 10 assisted living facilities, including but not limited to: [REDACTED]

[REDACTED] (Exhibit 5; Recording @ 17:15). However, the Appellant was not accepted by any of those facilities because of the Appellant's age and lack of income. (Exhibit 5; Recording @ 17:20; 34:07; 55:30; 1:03:53.)

The Facility was required to permit the Appellant an opportunity to participate in deciding where he will reside after discharge, and it afforded him that opportunity. 10 NYCRR § 415.3(i)(1)(vii). The Appellant was unable to offer alternatives to those explored by the Facility.

The Facility's Social Work Manager attempted to discuss the Appellant's procurement of Social Security benefits. However, the Appellant refused to provide any such information until days before this hearing when he indicated that he had an attorney who was helping him with a Social Security Income (SSI) appeal and that he might be interested in an [REDACTED] program referral. (Recording @ 1:03:53.) Although the Appellant testified that he has been working with an attorney on an SSI appeal for over one year (recording @ 18:30), the Appellant failed to produce any supporting documentation. Instead, he provided an electronic mail message from an

attorney stating that the Appellant missed a meeting to discuss his [REDACTED] case and could not be reached by telephone. (Appellant's Exhibit A.)

The Appellant and Ombudsman asserted that discharge to a shelter is not an appropriate plan because the Appellant will not be able to safely manage his needs there. (Recording @ 53:21; 1:09:44.) However, the Facility has established that the Appellant is independently able to administer his medications, does not require assistance with ADLs, and can obtain needed medical care or therapies as an outpatient. Before discharging the Appellant, the Facility will provide the Appellant with a supply of his medications and necessary outpatient referrals. (Exhibit 5; Recording @ 25:27.) The proposed discharge plan addresses the Appellant's needs and how those needs will be met after discharge. 10 NYCRR § 415.3(i)(1)(vi). The Facility has established that its proposed discharge plan to the [REDACTED] Shelter is appropriate.

#### DECISION

Schaffer Extended Care Center established that its determination to discharge the Appellant is correct and that its discharge plan, as set forth in its discharge notice dated [REDACTED] 2023, is appropriate.

Dated: July 10, 2023  
Menands, New York



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Natalie J. Bordeaux  
Administrative Law Judge