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# Department of Health

**KATHY HOCHUL**  
Governor

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

**JOHANNE E. MORNE, M.S.**  
Acting Executive Deputy Commissioner

October 23, 2023

## CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
c/o Montefiore Medical Center  
111 E 210 Street  
Bronx, New York 10467

Paula McCoy, SW  
Montefiore Medical Center  
111 E 210 Street  
Bronx, New York 10467

Shragi Goldberg, Administrator  
Triboro Center  
1160 Teller Avenue  
Bronx, New York 10456



**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

**Triboro Center,**

Respondent,

to discharge him from a residential  
health care facility.

COPY

DECISION  
AFTER  
HEARING

Docket # 6172

Hearing before:

Kathleen Dix  
Administrative Law Judge  
October 13, 2023, and October 20, 2023  
By WebEx Videoconference

Parties:

Triboro Center  
1160 Teller Avenue  
Bronx, NY 10456

By: Shragi Goldberg, Administrator

██████████  
c/o Montefiore Medical Center  
111 E 210 Street  
Bronx, NY 10467

By: ██████████

Interested Party:

Montefiore Medical Center  
111 E 210 Street  
Bronx, NY 10467

By: Shilpa Lad, M.D.  
John Loehner, M.D.

## JURISDICTION

By notice dated [REDACTED] 2023, Triboro Center, (Facility), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge [REDACTED] [REDACTED] (Appellant) from care and treatment in its Facility to "111 E 210 Street, Bronx, NY 10467<sup>1</sup>" (Hospital).

The hearing was held on [REDACTED] 2023, and [REDACTED] 2023, in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); and the New York State Administrative Procedure Act (SAPA); via Webex videoconference. (19 min. and 2h. 15 m., respectively.) Evidence was received and witnesses were examined. A digital recording of the hearing was made.

## HEARING RECORD

ALJ Exhibits:

- I. Notice of Hearing and Notice of Discharge/Transfer.

Facility's Exhibits:

None.

Appellant's Exhibit:

None.

Facility's Witnesses:

1. Shragi Goldberg, Administrator
2. Kathleen Flanagan, Regional Director of Clinical Services
3. Samantha Golembo, Director of Social Services

Appellant's Witnesses:

1. [REDACTED] [REDACTED] Appellant's [REDACTED] and designated representative.
2. [REDACTED] [REDACTED] Appellant's [REDACTED]

Other Witnesses:

1. Shilpa Lad, M.D., Consulting Psychiatrist
2. John Loehner, M.D, Medical Director, Moses Campus,  
Montefiore Medical Center
3. Paula McCoy Social Work Manager, Montefiore Medical Center

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<sup>1</sup> Montefiore Medical Center is located at 111 E 210 Street, Bronx, NY 10467.

## ISSUES

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

## FINDINGS OF FACTS

1. Respondent 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 Bronx, New York.

2. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2023, with a primary diagnosis of [REDACTED] (T. Flanagan, 15:51, 16:36, 21:26.)

3. On [REDACTED], 2023, the Appellant was transferred to the Hospital because of the [REDACTED] behavior he was exhibiting which made the staff feel threatened. (T. Flanagan 16:36-17:12, 17:49; Goldberg 1:51.)

4. By notice dated [REDACTED] 2023, the Respondent advised the Appellant of its determination to discharge him on [REDACTED] 2023, on the grounds that his "needs cannot be met after reasonable attempts at accommodation" . . . "as evidenced by: Hospital transfer." (ALJ Exhibit I.)

5. The discharge notice advised the Appellant he would be discharged to the "111 E 210 Street, Bronx, NY 10467" which is the address of Montefiore Medical Center. (ALJ Exhibit I.)

6. On [REDACTED], 2023, the Hospital discharged the Appellant back to the Facility who refused to accept him. The Hospital readmitted the Appellant after the Facility sent him back that same day. (T. McCoy 1:40; T. Goldberg 1:46.)

7. The Appellant remains at the Hospital pending the outcome of this hearing.

## APPLICABLE LAW

A residential health care facility, 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 PHL § 2803-z and set forth at 10 NYCRR 415.3(i) which provides, in pertinent part, that the facility shall:

(1) (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:

(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;

...

(3) the safety of individuals in the facility is endangered; or

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

...

(vi) 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, and provide a discharge summary pursuant to section 415.11(d) of this Title. . .

When alleging that a transfer or discharge is appropriate because it is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility, the necessity of the transfer or discharge must be documented in the resident's medical record by the resident's physician. 10 NYCRR 415.3(i)(l)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(B). When alleging that a transfer or discharge is appropriate because the safety or health of individuals in the facility is endangered, the necessity of the transfer or discharge must be documented in the resident's medical record by a physician. 10 NYCRR 415.3(i)(l)(ii)(b) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(B).

The Respondent has the burden of proving that the discharge is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

## DISCUSSION

The Appellant, a [REDACTED]-year-old man, was admitted to the Facility on [REDACTED] 2023, with a primary diagnosis of [REDACTED]. As stated in the [REDACTED], 2023, discharge notice, the Facility is seeking to discharge the Appellant and asserts that the transfer or discharge is necessary for the resident's welfare and because the resident's needs cannot be met after reasonable attempts at accommodation in the facility. (ALJ Exhibit I.) At the hearing, Facility witnesses also asserted that the Appellant's actions were also a basis of his discharge and his actions have caused the Facility staff to feel threatened. (T. Flanagan 16:36-17:12, 17:49; Goldberg 1:51.) The discharge notice makes no mention of the Appellant's behavior as justification for discharge.

There is a regulatory framework for a residential health care facility to follow prior to the discharge of a resident. Before the Facility seeks to discharge the Appellant, the Facility must notify the resident and designated representative of the discharge and the reasons for the discharge. 10 NYCRR § 415.3(i)(1)(iii)(a). The necessity of the transfer or discharge must be documented in the resident's medical record by a physician. 10 NYCRR 415.3(i)(1)(ii)(a) and (iii)(b); 42 C.F.R. § 483.15(c)(2)(ii)(B). The documentation showing the Facility's inability to meet the resident's needs must be made by the resident's physician and must include the specific resident needs the facility could not meet, the facility's efforts to meet those needs, and the specific services the receiving facility will provide to meet the needs of the resident that cannot be met at the current facility. Further, in a "Dear Nursing Home Administrator" letter (DAL) dated August 20, 2019, and re-issued in October 2022, (DAL-NH 19-07), the Department explained that if a resident's clinical or behavioral status endangers the health and/or safety of others at the Facility, to demonstrate that any of the circumstances permissible for a facility to initiate transfer or discharge the medical record must show documentation of the basis for the transfer or discharge.

Here, the Facility offered no medical evidence from a physician, and thus there is none in the record, documenting either of the proffered reasons for the Appellant's discharge, nor is there any evidence explaining what needs of the Appellant it could not meet. As stated in the DAL, "Facilities are required to determine their capacity and capability to care for the residents they admit, so in the absence of atypical changes in

residents' conditions, it should be rare that facilities that properly assess their capacity and capability to care for a resident then discharge that resident based on the inability to meet the resident's needs."

The regulations also require that the Facility provide sufficient preparation and orientation to residents to ensure a safe and orderly 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)). In this case, the discharge notice advised the Appellant he would be discharged to the Hospital. (ALJ Exhibit I.) However, in the same DAL, in the frequently asked questions, question 8, the Department placed all residential health care facilities on notice that discharges to hospitals are not appropriate discharge locations. The discharge of the Appellant to the Hospital was improper.

Further, the DAL also advised that 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. The Facility admitted the Appellant with a primary diagnosis of [REDACTED]. The Appellant was sent to the Hospital based upon the Appellant's behavior associated with his [REDACTED] diagnosis. The Facility's refusal to re-admit the Appellant is based upon the very same diagnosis and the behaviors associated with it, for which it sent the Appellant to the Hospital. The Facility's refusal to re-admit the Appellant is also improper.

While the regulations do allow for the discharge of residents where the resident's needs cannot be met after reasonable attempts at accommodation in the facility or who are a threat to the health and safety of others, the Facility must follow the regulatory requirements for a proper discharge. In the present case, the Facility did not do so and thus failed to meet its regulatory obligations. There is no evidence that the necessity of the discharge was documented in the Appellant's medical record by a physician, the Facility never commenced a discharge planning process for the Appellant's discharge to an appropriate facility - the Hospital is not an appropriate discharge facility, nor did the Facility provide sufficient preparation to the Appellant for the discharge, and the Facility's refusal to re-admit the Appellant is improper.

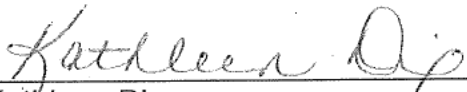


**DECISION**

The Facility failed to establish that its determination to discharge the Appellant is correct and that its discharge plan is appropriate.

1. Triboro Center is not authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED], 2023. Triboro Center 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).
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: Menands, New York  
October 23, 2023

  
\_\_\_\_\_  
Kathleen Dix  
Administrative Law Judge

To: Shragi Goldberg, Administrator  
Triboro Center  
1160 Teller Avenue  
Bronx, NY 10456

[REDACTED]  
[REDACTED]  
c/o Montefiore Medical Center  
111 E 210 Street  
Bronx, NY 10467

[REDACTED]

Montefiore Medical Center  
111 E 210 Street  
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