

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

ANDREW M. CUOMO  
Governor

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

LISA PINO, M.A., J.D.  
Executive Deputy Commissioner

August 6, 2021

### CERTIFIED MAIL/RETURN RECEIPT AND EMAIL

██████████  
c/o Triboro Center for Rehabilitation & Nursing  
1160 Teller Avenue  
Bronx, New York 10456

Samantha Golembo, DSW  
Triboro Center for Rehabilitation & Nursing  
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,

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: 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

Triboro Center for Rehabilitation and Nursing

Respondent,

to discharge Appellant from a residential health care facility.

COPY

DECISION

Before: Rayanne L. Babich  
Administrative Law Judge (ALJ)

Dates: June 17, 2021; June 29, 2021; and July 20, 2021

Held at: Webex videoconference

Parties: ██████████ Appellant  
c/o Triboro Center for Rehabilitation and Nursing  
1160 Teller Avenue  
Bronx, New York 10456

Samantha Golembo, Director of Social Work  
Triboro Center for Rehabilitation and Nursing  
1160 Teller Avenue  
Bronx, New York 10456

JURISDICTION

An Amended Notice of Transfer/Discharge dated ██████████ 2021, was served on ██████████ (Appellant) by Triboro Center for Rehabilitation and Nursing (Facility). 10 NYCRR 415.3(i)(1)(iii)(a). The Appellant appealed the proposed discharge. 10 NYCRR 415.3(i)(2). The hearing was digitally recorded. (R1 2:07:20; R2 0:59:49; R3 1:34:53.) The Appellant appeared

and represented herself at the hearing. The Facility was represented by Samantha Golembo, Director of Social Work.

RECORD

ALJ Exhibits: I – Letter with Notice of Hearing  
II – Amended Notice of Discharge dated [REDACTED] 2021

Facility Exhibits: 1 – Admission Record/Medical Records  
2 – Social Work email dated [REDACTED], 2021  
3 – Notice of Medicare Non-Coverage dated [REDACTED] 2021  
4 – Physician Progress Note dated [REDACTED] 2021

Appellant Exhibits: A – Appellant’s community medical specialists dated [REDACTED], 2021  
B – Appellant’s emails to housing programs dated [REDACTED], 2020 to [REDACTED]  
[REDACTED]

Facility Witnesses: Samantha Golembo, Director of Social Work  
Kiran Pillay, Director of Rehabilitation Services  
Carmen Liriano, Assistant Director of Recreations  
Rosemarie Calcano, Director of Nursing  
Esther Chijoke, M.D., Attending Physician

Appellant Witnesses: [REDACTED] [REDACTED]

FINDINGS OF FACT

1. Triboro Center for Rehabilitation and Nursing is a residential health care facility. [Ex I, II.]
2. The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED], 2018 for antibiotic treatment and rehabilitation services following an acute hospitalization due to [REDACTED] [Ex 1; R3@40:44.]

3. The Appellant's primary medical diagnoses include [REDACTED], [REDACTED]. She receives daily oral medications and monthly [REDACTED] medications for her conditions. [Ex 1, 4; R3@30:53.]
4. The Appellant received physical and occupational therapy intermittently during her admission to improve her ambulation and increase her independence with activities of daily living. The most recent episode of physical and occupational therapy was completed from [REDACTED] 2021, to [REDACTED] 2021. She has reached her maximum potential for rehabilitation services. [Ex 1; R1@1:05:23.]
5. The Appellant has met her treatment goals, requires assistance with showering/bathing as part of her activities of daily living but can manage her daily affairs. She also can safely ambulate independently while using a rollator for assistance. [R1@ 59:03, R3@ 31:51.]
6. The Facility's discharge plan is to transfer the Appellant to [REDACTED] located at [REDACTED]. The cost of the assisted living care is covered through the Appellant's Medicaid. [Ex II; R1@1:33:42.]
7. Esther Chijoke, M.D., the attending physician at the Facility, has determined the Appellant no longer requires the skilled services provided by the Facility and she is medically stable for discharge to an assisted living facility. [Ex 4; R3@29:08.]
8. Upon discharge, the Appellant will need to follow up with her medical specialty providers (specialists) in the community, including: [REDACTED] pain management; [REDACTED] [REDACTED]. [Ex A; R3@ 33:58.]
9. The Appellant objected to the discharge plan on the grounds that the discharge location is too far away from her current specialty medical providers with whom she has



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;

2. In planning for discharge, a facility must:

(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; and (vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.

10 NYCRR 415.3(i)(1)(vi)-(vii).

3. The Facility has the burden of proving that the "discharge or transfer is/was necessary and the discharge plan appropriate." 10 NYCRR 415.3(i)(2)(iii)(b).

### DISCUSSION

The Facility has proven that the discharge is necessary because the Appellant's health has improved sufficiently so she no longer needs skilled nursing care and has proven that its discharge plan to [REDACTED] is appropriate pursuant to 10 NYCRR 415.3(i).

#### Grounds for Transfer

The Appellant was admitted to the Facility following a hospitalization due to [REDACTED] where she continued to require antibiotic treatment and rehabilitation services. [Ex 1; R3@40:44.] The Facility is seeking to discharge the Appellant because it has been determined she no longer requires the type of services it provides. [Ex II.] Nursing homes in New York State are critically needed to provide nursing care to sick, invalid, infirm, disabled or convalescent persons and must be made available for those who require this on-site, high level of continuous care. PHL §2801(2); 10 NYCRR 415.2(k).

Esther Chijoke, M.D., an attending physician at the Facility, testified that the Appellant's treatment goals have been met and she no longer requires the skilled services provided by the Facility. [R3@33:20.] Currently, the only nursing care provided to the Appellant is assistance with daily showering. [R3@32:08.] Dr. Chijoke determined that the Appellant is medically cleared for discharge, can manage her affairs, and understands her medication regimen. [Ex 4; R3@29:08.] Dr. Chijoke opined that the Appellant's routine and on-going medical care needs can be met through outpatient medical providers in the community. [R3@ 35:10.]

Kiran Pillay, Director of Rehabilitation Services, testified that the Appellant met her rehabilitation goals because she can safely transfer herself, ambulates independently by using a rollator, and can independently perform her activities of daily living with the exception of showering. [R1@59:03, 1:10:13.] Mr. Pillay also testified that physical and occupational therapies were provided to the Appellant intermittently throughout the course of her admission but were most recently discontinued on [REDACTED] 2021 when she reached her maximum therapy potential. [Ex 1; R1@1:05:23, 1:07:02.]

Both Dr. Chijoke and the Appellant acknowledged the Appellant's medical conditions that require on-going medical follow up. The Appellant does not dispute the claim that she no longer requires the skilled services the Facility provides, or her recent discharge from physical and occupational therapy on [REDACTED] 2021. The Appellant asserted that she is currently under the care of several medical specialty providers (specialists) in the community for which she must have continued access. [R3@ 47:56.]

However, as Dr. Chijoke testified, the Appellant can continue with her medical care in the community. [R3@ 32:02.] Dr. Chijoke also testified that the Appellant's daily oral and monthly



██████████ medications can be provided through her medical providers in the community or by the professional staff at the discharge location. [R3@ 30:53.]

### Discharge Plan

A discharge plan must “[address] the medical needs of the resident and how these will be met after discharge.” 10 NYCRR 415.3(i)(1)(vi). The discharge plan offered to the Appellant is transfer to ██████████, located in ██████████, where she has been accepted for placement. [Ex 1; R1@ 50:56.] The Appellant objected to the discharge location because it is not in the same geographical area of her specialists and her family members. [R3@ 48:48.] She also objected to the discharge plan because she has been seeking housing through a voucher program and she has been advised that she will lose the voucher once she is discharged from the Facility. [R3@ 44:24.]

Dr. Chijoke opined that the Appellant is appropriate for an assisted living facility because it will have medical providers to oversee her routine medical care and she can receive daily assistance with showering. Dr. Chijoke emphasized that it is necessary for the Appellant to continue to follow up with her medical care including her specialists. [R3@ 33:58.] In her testimony, Dr. Chijoke explained that the assisted living facility will assign its own medical provider to the Appellant who can assist her with coordinating the care provided by the specialists, or alternatively, can assist the Appellant with obtaining new specialists who are geographically closer to the assisted living facility as needed. [R3@ 29:50, 32:20.]

Samantha Golembo, Director of Social Work, testified that the Appellant no longer requires the skilled services the Facility provides, and that her care needs can be met safely and appropriately in the assisted living facility. [Ex 1; R1@1:27:26, 1:31:46, 1:33:03.] Ms. Golembo also testified that the Appellant is eligible for transportation under Medicaid that can be used to

travel her medical appointments. [R1@ 1:33:03.] Both Dr. Chijoke and Ms. Golembo testified that [REDACTED] is the most appropriate setting for the Appellant because it will provide access to medical providers, assistance with daily showering, and case management services to assist the Appellant as needed. [R1@ 1:30:40.]

The Appellant asserts that the distance from her current community specialists and family members to the discharge location will be prohibitive because of the travel time. [R3@48:41, 58:09.] According Ms. Golembo, the discharge planning efforts by the Facility also included referrals to three other assisted living facilities in the geographic area preferred by the Appellant but were unsuccessful because the only locations that accepted Medicaid had an age requirement of [REDACTED] or older. [R1@ 1:34:28.] Ms. Golembo also testified that due to the Appellant's age, the options for assisted living facilities are very limited and the discharge location chosen is the closest option available. [R1@ 1:39:32.] Additional testimony from Ms. Golembo showed that the distance between the Facility and the discharge location is approximately [REDACTED] miles, or less than [REDACTED] in travel time. [R1@ 1:31:03, R3@1:18:59.] Although the Appellant prefers to remain in her current community, the lack of available housing and assisted living services for her care and age group limits the options available to the Appellant. In addition, the testimony has shown that the Appellant can use Medicaid transportation to attend her medical appointments, or the medical providers and case managers at the assisted living facility can assist in locating new specialists closer to her area. [R1@ 1:30:40, R3@ 29:50, 32:20.]

The Appellant also argued that her plan for discharge was to obtain her own housing in the community through assistance from local programs and resources. [R3@ 57:47.] The Appellant testified that she entered a lottery for Section 8 housing but was not chosen. [R3@ 45:43.] She successfully obtained an "Olmstead" voucher which she described as a low income housing

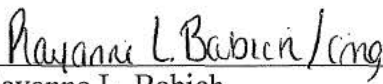
voucher for eligible long-term nursing home residents who are returning to the community, but there are long waiting lists for the housing. [Ex B; R3@1:11:43.] Although the Appellant has actively participated in her discharge planning process and her efforts are noteworthy, the extended wait time for housing does not justify a continued admission in the Facility when she no longer requires its services.

The Facility's determination to discharge the Appellant is appropriate because the Facility has proven that the Appellant's condition has improved sufficiently so that she no longer needs nursing home care. I find discharge to [REDACTED] appropriate because it will provide the Appellant with the continued daily assistance to complete her activities of daily living and access to medical providers. The Facility is authorized to transfer the Appellant in accordance with its discharge plan.

ORDER

The Facility is authorized to discharge the Appellant to the location identified in the Amended Notice of Discharge dated [REDACTED] 2021 and in accordance with its discharge plan.

Dated: August 5, 2021  
Albany, New York

  
\_\_\_\_\_  
Rayanne L. Babich  
Administrative Law Judge

TO:

■■■■ Appellant  
c/o Triboro Center for Rehabilitation and Nursing  
1160 Teller Avenue  
Bronx, New York 10456

Samantha Golembo, Director of Social Work  
Triboro Center for Rehabilitation and Nursing  
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