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## Department of Health

KATHY HOCHUL  
Governor

MARY T. BASSETT, M.D., M.P.H.  
Acting Commissioner

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

December 23, 2021

### CERTIFIED MAIL/RETURN RECEIPT

Eve Koopersmith, Esq.  
Garfunkel Wild, P.C.  
111 Great Neck Road  
Great Neck, New York 11021

██████████ ██████████  
c/o Rutland Nursing Home  
585 Schenectady Avenue  
Brooklyn, New York 11203

**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,

Dawn MacKillop-Soller  
Acting Chief Administrative Law Judge  
Bureau of Adjudication

DXM: cmg  
Enclosure

**STATE OF NEW YORK: DEPARTMENT OF HEALTH**

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

██████████ ██████████

**Appellant,**

**COPY**

**from a determination by**

**DECISION**

**RUTLAND NURSING HOME**

**Respondent,**

**to discharge him from a residential health care facility.**

Hearing Before:

Jean T. Carney  
Administrative Law Judge

Held via:

Cisco WebEx videoconference

Hearing Date:

October 26, 2021  
Record closed November 3, 2021

Parties:

██████████ ██████████ Appellant, pro se  
██

Richmond Center; Respondent  
By: Eve Koopersmith, Esq.  
Garfunkel Wild, P.C.  
111 Great Neck Road  
Great Neck, New York 11201  
ekoopersmith@garfunkelwild.com

## JURISDICTION

By notice dated [REDACTED] 2021, Rutland Nursing Home (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] [REDACTED] (Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i).

## HEARING RECORD

Facility Exhibits:            1 – Hospital discharge summary  
   2 – Physician and Nursing Admission Evaluation  
   3 – Physical and Occupational Therapy Notes  
   4 – Progress Notes  
   5 – Social Service Notes  
   6 – Physical Therapy Screening Form  
   7 – Admission Face Sheet  
   8 – Physician Letter dated [REDACTED], 2021

Facility Witnesses:            Samuel Khalil, Director of Rehabilitation  
   Marra Blank, Director of Nursing  
   Deborah Headley, Director of Social Services

Appellant Exhibits:            None

Appellant Witness:            [REDACTED] [REDACTED] Appellant

The Notice of Hearing was admitted as ALJ I, and the hearing was digitally recorded. The record was left open until November 3, 2021, for the facility to provide the DHS Referral Form, which was admitted as ALJ II.

## ISSUES

Has the Facility established that the Appellant's discharge is necessary and discharge plan is appropriate?

## FINDINGS OF FACT

Citations in parentheses refers to the testimony of the witness ("T") at the hearing and exhibits ("Exhibit") found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejected in favor of the cited evidence. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2021, for short term care after hospitalization for [REDACTED] (Exhibit 7).

2. The Appellant received occupational therapy from [REDACTED] 2021 – [REDACTED] 2021, and physical therapy from [REDACTED], 2021 – [REDACTED] 2021. He was discharged because he achieved "modified independent" in his goals. Modified independent means the Appellant takes more time to complete the goal, or he uses a straight cane. On [REDACTED] 2021, physical therapy re-assessed the Appellant and found that he functioned at the same level as when he was discharged in [REDACTED] (Exhibit 3; T Khalil).

3. The Appellant's treatment team determined that his condition has improved sufficiently such that his he no longer needs the services provided by the facility. (Exhibits 1 and 8; T Kahlil, Blank, and Headley).

4. The facility worked with the Appellant regarding possible discharge locations. The Appellant had previously lived with his [REDACTED] but is afraid to return there because of the stairs. The facility contacted several adult living facilities, but the applications were rejected due to lack of income. The facility also reached out to [REDACTED] [REDACTED] housing programs, and assisted the Appellant in applying for Social Security benefits. The referral to [REDACTED] is pending a decision from the Social Security Administration. (Exhibit 5; T [REDACTED] and Headley).

5. As a last resort, the facility submitted a referral to the Department of Homeless Services (DHS) for placement in a shelter, and the Appellate was deemed appropriate for shelter services. (Exhibit II).

#### APPLICABLE LAW

A residential health care facility, also referred to 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] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(1)(i)(a), a resident may only be discharged when the interdisciplinary care team determines that:

- (1) the transfer of discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;
- (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;
- (3) the safety of individuals in the facility is endangered; or
- (4) the health of individuals in the facility is endangered.

Additionally, 10 NYCRR § 415(i)(1)(ii) requires that the facility ensures complete documentation in the resident's clinical record when transferring or discharging a resident under the above circumstances. The documentation shall be made by:

- (a) the resident's physician and, as appropriate, interdisciplinary care team, when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; and
- (b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the

facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph.

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision. (*Stoker v. Tarantino*, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3<sup>rd</sup> Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

#### DISCUSSION

The facility has met its burden of showing that the discharge is necessary, and the discharge plan is appropriate. 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 evidence establishes that the Appellant’s medical needs, including medication management and physical therapy, can be met in the community, and he no longer needs the services provided in the facility. The Director of Rehabilitation testified to the Appellant’s gains in gait and mobility; and pointed out that the facility provides restorative services, not maintenance services. Maintenance therapy can be provided by outpatient services after discharge. The evidence demonstrates that the Appellant’s health has improved sufficiently so that he no longer needs the services provided by the facility.

The Appellant does not want to go into a shelter because he does not think he can physically manage being in a shelter. He would like his own apartment, and asks for additional time to find housing. However, the facility explored many other options with the Appellant before applying to DHS as a last resort. DHS is aware of the Appellant’s


mobility issues, and has accepted his application. While a shelter is not the optimum option, it is not inappropriate here.

**ORDER**

Rutland Nursing Home has established that its determination to discharge the Appellant was necessary, and that transfer to DHS is appropriate.

1. Rutland Nursing Home is authorized to discharge the Appellant on or after [REDACTED], 2021.
2. Prior to discharge, the facility shall ensure that the Appellant shall have scheduled medical appointments to ensure continued treatment and healthcare; sufficient medication to sustain him until he can find a pharmacy near his new location; and all adaptive equipment he may need for mobility in the community.
3. 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:** December 23, 2021  
Albany, New York

  
**JEAN T. CARNEY**  
Administrative Law Judge



TO: Eve Koopersmith, Esq.  
Garfunkel Wild, P.C.  
111 Great Neck Road  
Great Neck, New York 11021  
ekoopersmith@garfunkelwild.com

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