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# Department of Health

KATHY HOCHUL  
Governor

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

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

September 30, 2022

## CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
c/o Katherine Rauschendorfer, DSW  
Split Rock Rehabilitation and Health Center  
3825 Baychester Avenue  
Bronx, New York 10466

Katherine Rauschendorfer, DSW  
Split Rock Rehabilitation and Health Center  
3825 Baychester Avenue  
Bronx, New York 10466

Jason Atlas, Esq.  
Schwartz Sladkus Reich Greenberg Atlas  
444 Madison Avenue  
New York, New York 10022

**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/cmj*

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

SPLIT ROCK REHABILITATION AND HEALTH CARE CENTER

to discharge her from a residential health care facility.

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DECISION

Before: Kimberly A. O'Brien  
Administrative Law Judge

Held at: Videoconference via WebEx

Dates: September 29, 2022

Parties: ██████████ ██████████  
c/o Katherine Rauschendorfer, DSW  
Split Rock Rehabilitation and Health Care Center  
3825 Baychester Avenue  
Bronx, New York 10466  
By: Pro Se

Split Rock Rehabilitation and Health Care Center  
3825 Baychester Avenue  
Bronx, New York 10466  
By: Jason Atlas, Esq.

**JURISDICTION**

By notice dated [REDACTED] 2022, Split Rock Rehabilitation and Health Care Center (facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge resident [REDACTED] [REDACTED] (Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) 415.3(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR.

Evidence was received and witnesses were examined. A digital recording was made of the proceeding.

**HEARING RECORD**

- ALJ Exhibits:            1. Letter with Notice of Hearing & [REDACTED]/22 Transfer/Discharge Notice
  
- Facility Exhibits:        1. Resident's medical records  
                                 2. Physician Note [REDACTED] 2022
  
- Appellant Exhibits:     None
  
- Facility Witness:        Katherine Rauschendorfer, Director of Social Work
  
- Appellant Witness:      Appellant testified on her own behalf.

### FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old female who was admitted from the hospital to the Facility on [REDACTED], 2021 for short-term rehabilitation. (Facility Exhibit [Ex.] 1; Testimony [T.]

2. The Appellant is independent in her activities of daily living (ADLs) and goes out on pass without a chaperone. The Resident is able to advocate for herself and schedules her own appointments out in the community. The resident uses both "Access-a-ride" and "taxis" (Ex. 1, Ex. 2; T. Rauschendorfer; Appellant).

3. The Appellant has no skilled nursing needs, and all her needs can be safely managed in the community. ( Ex. 1, Ex. 2 – [REDACTED]/2022 Physician Note; T. Rauschendorfer).

4. On [REDACTED], 2022, the Facility issued a Transfer/Discharge Notice (Discharge Notice) to the Appellant. The Discharge Notice states that the Appellant will be transferred because the Appellant's health has improved sufficiently such that the Appellant no longer requires the services of the facility. The proposed discharge is to [REDACTED] Shelter, [REDACTED] (shelter). (ALJ Ex. 1, Ex. 1, Ex. 2; T. DSW).

5. The Appellant timely appealed the facility's discharge determination and proposed discharge location (ALJ Ex. 1).

6. The Appellant has remained at the Facility during the pendency of the appeal.

### ISSUES

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

### APPLICABLE LAW

A residential health care facility, also referred to in the Department of Health Rules and Regulations as a nursing home, is a facility which provides regular nursing, medical, rehabilitative,

and professional services to residents who do not require hospitalization. (PHL § 2801[2][3]; 10 NYCRR 415.2[k].)

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations. (10 NYCRR 415.3[i][1].)

The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415(i)(1)(i)(a)(2), which states:

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.

Under the hearing procedures at 10 NYCRR 415.3(i)(2)(iii), the Facility bears the burden to prove a discharge is necessary and appropriate. Under SAPA § 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support a conclusion or fact. It is less than a preponderance of evidence but more than mere surmise, conjecture or speculation, and it constitutes a rational basis for a decision. (Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 [3d Dept. 1984], appeal dismissed 63 N.Y.2d 649.

#### DISCUSSION

The Appellant was admitted to the facility for short-term rehabilitation/ restorative therapy. Facility physician Ala May Lumibao, MD, documented that the Appellant is medically stable and is independent with all her ADLs and has no skilled needs. The discharge is necessary and the discharge plan to the shelter is appropriate. Dr. Lumibao arrived at this decision along with the care team that has been working with Appellant throughout her stay.

Ms. Rauschendorfer, Director of Social Work (DSW), testified the Appellant is independent with all her ADLs and is alert and oriented, and able to make her needs known and advocate for herself. The Appellant has refused to accept discharge to an apartment offered through "██████████"

██████████ stating that she only wanted an apartment in "██████████." The Appellant refused to be interviewed by an assisted living facility offering a placement. The facility proposed the shelter as the discharge location as a last resort. The DSW testified that she herself is willing to work with Appellant to identify potential alternatives to a discharge to the shelter including assisted living facilities (ALFs) and or reapply to "██████████." The DSW indicated that while it is possible, it is not likely an apartment will be immediately available through ██████████. The DSW testified that the Appellant may have worked with an Ombudsperson in the past and will assist the Appellant with reconnecting if she chooses to do that.

The Appellant testified that she is not ready for discharge. She said that she experiences pain and often she ██████████ put her clothes on and shower herself. The Appellant said she wants to stay in the facility to get stronger so that she can have surgery, and that she has been told by her surgeons that she is not physically strong enough to have surgery. She believes that she has not been well taken care of at the facility, but that she needs the care the facility provides. The Appellant requested that the DSW herself work with her on discharge planning, and the DSW agreed.

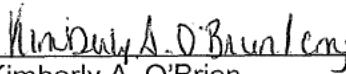
The ALJ ruled on the record that the facility has met its burden to show that the discharge is necessary, and that the evidence supports that the Appellant's health has improved sufficiently such that she no longer needs the services of a skilled nursing facility. The Appellant has completed her rehabilitation program at the facility and her medical needs can be met in the community. The ALJ also ruled that discharge to the shelter is an available and appropriate discharge location. While the facility is open to assisting the Appellant with finding an alternative discharge placement in the community during the Appellant's remaining time at the facility it is up to the Appellant to engage in the process actively and cooperatively.

**DECISION**

The facility has established that its determination to discharge the Appellant was correct, and that its transfer location is appropriate.

1. The facility is authorized to discharge the Appellant on or after [REDACTED] 2022 in accordance with its [REDACTED] 2022 discharge notice.
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  
September 30, 2022

  
\_\_\_\_\_  
Kimberly A. O'Brien  
Administrative Law Judge

TO: [REDACTED] Resident  
c/o Katherine Rauschendorfer, DSW  
Split Rock Rehabilitation and Health Center  
3825 Baychester Avenue  
Bronx, New York 10466  
By: Pro Se

Katherine Rauschendorfer, DSW  
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