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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

January 14, 2022

## CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
c/o Morris Park Rehabilitation and  
Nursing Center  
1235 Pelham Parkway  
Bronx, New York 10469

Marianne Kane, Director of Social Services  
Morris Park Rehabilitation and  
Nursing Center  
1235 Pelham Parkway  
Bronx, New York 10469

Daniel Ross, Esq.  
Mobilization for Justice  
100 William Street, 6<sup>th</sup> Floor  
New York, New York 10038

**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

COPY

██████████ ██████████

Appellant,

from a determination by

DECISION

**MORRIS PARK REHABILITATION & NURSING CENTER**

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: November 18, 2021  
Record closed on December 10, 2021

Parties: Morris Park Rehabilitation & Nursing Center, Respondent  
By: Marianne Kane  
Director of Social Services  
mkane@morris-park.com

██████████ ██████████

Appellant

By: Daniel Ross, Esq.  
Mobilization for Justice  
dross@mfjlegal.org

## JURISDICTION

By notice dated [REDACTED], 2021, Morris Park Rehabilitation & Nursing Center (Morris Park or 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 on the grounds that the Appellant no longer needed the services provided by the Facility. The proposed discharge location is to [REDACTED] shelter at [REDACTED] [REDACTED]. 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

ALJ Exhibits: I – Notice of Hearing

Facility Exhibits: 1 – Occupational Therapy Discharge Summary  
2 – Physical Therapy Discharge Summary  
3 - Physician notes  
4 – Out On Pass documentation  
5 – Social Work Notes  
6 – Supplemental Security Income denial letter

Facility Witnesses: Krunal Bhatt, Director of Rehabilitation  
Sommer Espino, Director of Nursing  
Ronald Gross, M.D., Medical Director  
Marianne Kane, Director of Social Services

Appellant Exhibits: A – Resident CNA Documentation Record  
B – Shelter Referral Form  
C – [REDACTED] 2021 MDS  
D – [REDACTED] 2021 MDS  
E – [REDACTED] 2020 MDS

Appellant Witness: [REDACTED] [REDACTED] Appellant

A [REDACTED] interpreter was also present. A transcript of the proceeding was made part of the record, and the record closed upon receipt of the transcript.

## ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its 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], 2019 from [REDACTED] Hospital with relevant diagnoses of [REDACTED]  
[REDACTED]  
[REDACTED] (Exhibits 3, 5, B and E).
2. On [REDACTED] 2021, the Facility served a Transfer/Discharge Notice on the Appellant, asserting that the Appellant's "health has improved sufficiently so that [he] no longer need the services provided by the facility." (ALJ Exhibit I).
3. The Appellant often leaves the Facility during the day, taking either public transportation or a medi-van to medical appointments. He is medically stable and can function in the community. The Appellant would be appropriate for an assisted living setting. (T Ms. Espino and Dr. Gross).
4. The Appellant currently requires supervision and assistance in setting up certain activities of daily living (ADL) including showering, medication administration, pacemaker monitoring, and grooming. (Exhibits A and C; T Ms. Espino and Appellant).
5. A person is medically inappropriate for shelter placement if they are unable to care for themselves and independently manage ADLs as set forth on the ADL assessment

for Institutional Referrals. The assessment form requires a score of 12, and criteria include medication management, showering and grooming independently. (Exhibit B).

6. The Facility made several referrals to adult homes and assisted living facilities prior to submitting the application to the shelter system. Those referrals were denied for either lack of income, or age. (T Ms. Kane).

#### 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 shown that the Appellant is medically stable, and able to navigate in the community; but has failed to show that the discharge plan is appropriate for the Appellant.

The evidence supports the Facility's position that the Appellant's health has improved sufficiently that he may be safely discharged. Dr. Gross testified credibly to the Appellant's ability to function and maneuver in the community. The Appellant does not dispute that he leaves the facility during the day, that he makes his own medical appointments, and that he can navigate public transportation with the assistance of a cane.

However, the Facility has failed to show that discharge to a shelter is appropriate. Prior to discharge, the Facility must show how the Appellant's medical and physical needs will be met at the discharge location. Here, the Appellant requires set up and supervision for several ADLs, including bathing and personal hygiene. The shelter cannot provide that level of support. In addition, the Appellant requires assistance in administering his [REDACTED] medication, and monitoring his [REDACTED]. The shelter



cannot provide that assistance. Dr. Gross testified that the Appellant would be appropriate for discharge to an assisted living Facility. The shelter is not an assisted living Facility and therefore is not an appropriate discharge location for the Appellant.

**DECISION**

The Appellant's appeal is granted because Morris Park Rehabilitation & Nursing Center has not established that its determination to discharge the Appellant to the shelter system is appropriate.

**DATED: Albany, New York  
January 13, 2022**

  
**JEAN T. CARNEY**  
**Administrative Law Judge**

**TO:** Marianne Kane, Director of Social Services  
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