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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

June 16, 2022

## CERTIFIED MAIL/RETURN RECEIPT

██████ ██████  
c/o The Riverside Premier Rehabilitation and Healing Center  
150 Riverside Drive  
New York, New York 10024

Allison Bellin, DSW  
The Riverside Premier Rehabilitation and Healing Center  
150 Riverside Drive  
New York, New York 10024

Barry Schechter, Ombudsman  
-by email only

**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:nm  
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 :

The Riverside Premier Rehabilitation and Healing Center, :  
Respondent, :

to discharge her from a residential health care facility. :

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**DECISION**

**Hearing Before:** Ann Gayle  
Administrative Law Judge

**Held:** Via Cisco Webex

**Hearing Date:** May 5, 2022  
Record closed June 3, 2022

**Parties:** The Riverside Premier Rehabilitation and Healing Center  
By: Allison Bellin, Social Work Director

██████████  
*Pro Se*

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as The Riverside Premier Rehabilitation and Healing Center (“The Riverside,” “Respondent” or “Facility”) 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.

Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3(i). Respondent determined to discharge █ █ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(i)(1)(i)(a)(2):

- (1) With regard to transfer or discharge of residents, the facility shall:
  - (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:
      - (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.

Appellant appealed the discharge determination to the New York State Department of Health and a hearing on that appeal was held. Pursuant to §415.3(i)(2)(iii)(b), the Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate.

A recording of the hearing was made part of the record. Appellant, assisted by Ombudsman Barry Schechter, testified on her own behalf. Okechuawu Igwe, M.D., Director of Rehab Leah Creash, Social Worker Jaleesa Peters, Nurse Manager Mark Salvador, and Social Work Director (“DSW”) Allison Bellin testified for Respondent.

The following documents were accepted into evidence by the Administrative Law Judge (“ALJ”) as ALJ, Facility, and Appellant Exhibits:

ALJ:

- I: Notice of Hearing with attached Notice of Discharge/Transfer
- II: March 29, 2022 letter re April 14, 2022 hearing date
- III: April 19, 2022 letter re May 5, 2022, 1 p.m. hearing date
- IV: April 27, 2022 letter re May 5, 2022, 2 p.m. hearing date

Facility:

- 1: Rehab notes
- 2: Social Work Progress notes
- 3: Physician note
- 4: ADLs (Activities of Daily Living)

Appellant:

- A: Prior physician letters
- B: █, 2022 letter from Barry J. Klyde, M.D. – received post-hearing
- C: █, 2022 letter from Woochul Jung, L Ac – received post-hearing

**ISSUE**

Has The Riverside Premier Rehabilitation and Healing Center established that the discharge is necessary and the discharge plan is appropriate?

**FINDINGS OF FACT**

Citations in parentheses refer to testimony (“T”) and exhibits (“Ex”) found persuasive.

1. Respondent, The Riverside Premier Rehabilitation and Healing Center, is a residential health care facility located in New York, New York.

2. Appellant, █ age █ was admitted to the Facility from █ on █, 2020. Her diagnoses include █  
█

█. (Ex 2; Ex 3; Ex 4; T Bellin, Igwe, Salvador)

3. It is the professional opinion of Appellant’s caregivers at the Facility that discharge to █ Shelter (“Shelter”) is appropriate for Appellant. By notice dated █

2022, Respondent advised Appellant that it had determined to discharge her to Shelter on the grounds that her health has improved sufficiently so she no longer needs the services provided by the facility. (Ex I; T Igwe, Creash, Salvador, Peters, Bellin)

4. Appellant has remained at the Facility pending the outcome of this proceeding.

#### DISCUSSION

The evidence presented by Respondent demonstrated that: Appellant is independent with her ADLs (activities of daily living); she no longer requires skilled care; her chronic and acute medical conditions are stable and can be treated in the community; she is capable of managing her health care needs including administering and managing her medications; she ambulates independently; and discharge to the Shelter is an appropriate discharge plan for Appellant. The Shelter will provide assistance with securing housing and other services in the community.

The Shelter was identified as a last resort because Appellant's previous home is not an option, she does not believe she could live with her █ even temporarily, and efforts to find independent housing in the community have not yet been fruitful. In addition, Appellant has not been amenable to exploring Assisted Living. Appellant testified that her apartment in the community is █ beneath her unit infiltrated her apartment causing █ and other dangerous conditions which, coupled with her falls, led to her needing surgeries and hospitalizations, beginning approximately five years ago.

Appellant pays \$ █ per month for health insurance, and she has medical debt. Appellant does not wish to explore assisted living facilities because she cannot afford to privately pay, and the \$ █ per month stipend she would receive in a Medicaid facility would not allow her to continue paying the \$ █ per month for health insurance which "saved her life."

Respondent prepared an application for discharge to the Shelter, but Appellant does not consent and she refused to sign it. Ms. Bellin testified that the Shelter has not indicated whether Appellant will be accepted because the application was submitted without Appellant's signature. Respondent opted to await a decision on this appeal to follow-up on the Shelter application.

Appellant believes she requires a continued stay at the Facility to receive additional rehabilitation services or to be moved to a different floor. She also believes all the progress she's achieved due to her hard work will be for naught and she will deteriorate in the Shelter.

Appellant's Exhibit A included letters from her community treating physician and █  
Barry J. Klyde, M.D., and Woochul Jung, L Ac.

Dr. Klyde wrote, "I have treated [Appellant] for many years. She should not be moved to a shelter because of her multiple health problems. She will become more ill if forced to move." Mr. Jung wrote, "It is my opinion that she should not be sent to the shelter due to her medical condition. If you have any questions or concerns, please do not hesitate to contact us at ..."

The letters did not provide specifics. Based on Mr. Jung's statement, "please do not hesitate to contact us," the parties were given the option of continuing the hearing on another day to attempt to have Dr. Klyde and/or Mr. Jung testify, or concluding the hearing and leaving the record open to give either/both of them the opportunity to provide more specific reasons for their opinions by written submission. The parties chose the latter.

Appellant provided additional letters from Dr. Klyde and Mr. Jung on June 3, 2022, the final deadline given for such submission. Dr. Klyde's █, 2022 letter and Mr. Jung's █  
█ 2022 letter were marked (post-hearing) as Appellant's Exhibits B and C, respectively.

Dr. Klyde wrote, Appellant "has been through many surgeries and █ In addition I have treated her throughout for █, and she most recently suffered █

█ It is my strong medical opinion she should not be sent to a shelter because of many health complications. I believe the best course for Ms. █ and her health would be if she stays in the physical rehab she is currently in, so we are certain that her health is being monitored and not worsen by entering a public shelter.” (Ex B).

Mr. Jung wrote, Appellant “has been under our medical care since 2017. Starting 2016, she went through various █. It is my medical opinion that she should not be sent to the shelter due to her medical conditions.” (Ex C)

At the hearing, the parties were given the option of contacting the ALJ’s office after Dr. Klyde’s and Mr. Jung’s post-hearing letters were submitted if they wished to request an additional hearing date or have further discussion. Neither party made such request to date.

Dr. Igwe testified and his █, 2022 progress note (Ex 3) confirmed that Appellant’s medical condition is stable and she is “medically fit” to be transferred to a shelter. Respondent’s witnesses, Rehab Director Leah Creash and Nurse Manager Mark Salvador, concur that Appellant is independent with her ADLs and capable of caring for her medical conditions in the community, and is appropriate for discharge to the Shelter. DSW Allison Bellin and Social worker Jaleesa Peters testified about the efforts Respondent has made with Appellant, beginning shortly after her admission to the Facility in █ 2020, to explore discharge to the community by applying for housing and considering living with family and/or in Assisted Living Facilities. Appellant is on a waiting list for housing, and she adamantly refuses to consider assisted living arrangements.

Respondent has met its burden of proving the grounds for discharge: Appellant’s health has improved sufficiently so she no longer needs the services provided by the facility, and that the Shelter which was identified as a last resort, is appropriate to meet Appellant’s needs.



Appellant's, Dr. Klyde's, and Mr. Jung's concerns, beliefs, and opinions that "the best course for [Appellant] and her health would be if she stays in the physical rehab she is currently in, so we are certain that her health is being monitored and not worsen by entering a public shelter" (Ex B), and "she should not be sent to the shelter due to her medical conditions" have been considered. Respondent has made repeated on-going attempts for more than a year to explore a lower level of care where Appellant would have support and assistance for her health needs. Appellant would not so much as consider such options, even for a temporary placement while she explores housing. Appellant cannot opine and offer evidence of others' opinions that a public shelter is not appropriate for her while simultaneously and for more than a year refuse to explore a potentially safe and appropriate option such as assisted living. Remaining in the Facility when she no longer requires such care and other appropriate options are available will not be allowed.

Appellant is strongly urged to reconsider exploring transfer/discharge to an assisted living facility and is encouraged to, independently or with Respondent's assistance, make arrangements to apply, visit (virtually or otherwise) and follow through with assisted living options.

### **CONCLUSION**

Respondent has proven that Appellant's health has improved sufficiently that she no longer requires skilled care, and that discharge to the Shelter system is appropriate for Appellant at this time. Speculation that past or current medical conditions might recur or worsen in the future is not sufficient to warrant remaining in a skilled facility when Appellant no longer requires such care, and the discharge location has been shown to be appropriate.

### **DECISION**

I find that the transfer is necessary and the discharge plan is appropriate.

█ / The Riverside

The appeal by Appellant is therefore DENIED.

Respondent, The Riverside Premier Rehabilitation and Healing Center, is authorized to discharge Appellant in accordance with the █ 2022 discharge notice if the Shelter accepts Appellant following Respondent's re-submission or follow-up of the Shelter application. The discharge shall occur no sooner than █ 2022, in order to give the parties the opportunity to re-submit or follow-up on the Shelter application and to provide Appellant the opportunity to explore assisted living, living with family, or other options. Appellant may leave the Facility sooner than █, 2022, if housing to her satisfaction is secured or for any reason she chooses to leave.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

Dated: New York, New York  
June 16, 2022

*Ann Gayle*

Ann Gayle  
Administrative Law Judge

TO: █ █  
c/o The Riverside Premier Rehabilitation and Healing Center  
150 Riverside Drive  
New York, New York 10024

Allison Bellin, DSW  
The Riverside Premier Rehabilitation and Healing Center  
150 Riverside Drive  
New York, New York 10024

Barry Schechter, Ombudsman  
-by email only