

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan  
SAPA File  
BOA by scan



## Department of Health

KATHY HOCHUL  
Governor

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

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

July 6, 2022

### CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
c/o Brooklyn Center for Rehabilitation and Nursing  
170 Buffalo Avenue  
Brooklyn, New York 11213

David Schorr, Administrator  
Brooklyn Center for Rehabilitation and Nursing  
170 Buffalo Avenue  
Brooklyn, New York 11213

**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**

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

██████████ ██████████ :

Appellant, :

from a determination by :

**Brooklyn Center for Rehabilitation and Nursing,** :

Respondent, :

to discharge him from a residential health care facility. :

COPY

**DECISION**

**Hearing Before:**

Ann Gayle  
Administrative Law Judge

**Held:**

Via Cisco Webex

**Hearing Date:**

June 29, 2022  
Scheduled for June 15, 2022  
Adjourned to June 23, then June 29, 2022

**Parties:**

Brooklyn Center for Rehabilitation and Nursing  
By: David Schorr, Administrator

██████████ ██████████

*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 Brooklyn Center for Rehabilitation and Nursing (“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 testified on his own behalf. Director of Social Services Michelle Jordan, Assistant Director of Rehab Mahmoud Nagy, Nurse Practitioner Thomas Skurtu, Administrator David Schorr, and Director of Nursing

Dorett Williams, R.N., testified for Respondent. Also present were Director of Rehab Judy Manalili, Nurse Manager Amanda Peters, R.N., and Social Worker Tekeyra Foncette; they were identified by Appellant as potential witnesses but neither party called upon them to testify.

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: June 10, 2022 letter re June 23, 2022 hearing date
- III: June 24, 2022 letter re June 29, 2022 hearing date

Facility:

- 1: Visual Bedside Kardex as of ████████ 22
- 2: POC Response History – Locomotion on Unit
- 3: POC Response History – Locomotion off Unit
- 4: Rehab Referral
- 5: POC Response History – Walk in Corridor Self-Performance
- 6: POC Response History – Walk in Room Self-Performance

Appellant:

A through I:

On June 14, 2022, the ALJ’s office received an email from Appellant; it contained ten attachments consisting of nine images and a document. The ALJ marked the nine images Exhibits A through I. The document was marked “Exhibit J.” At the start of the hearing, Appellant explained that the nine images were not intended to be exhibits. As such, they were not officially marked for identification or offered into evidence.

- J: ██████████ Post-Acute Care Transfer Report
- K: Resident’s statement
- L: ██████████
- M: Fall from bed
- N: ██████████
- O: Progress notes
- P: Two-hour gym
- Q: Bicycle exercise
- R: Prescription for ██████████ ██████████
- S: Urinals
- T: ██████████ surgery



DISCUSSION

The evidence presented by Respondent demonstrated that Appellant is independent with his ADLs; he no longer requires skilled care; he ambulates independently; and discharge to the Shelter is an appropriate discharge plan for Appellant.

Respondent submitted an application to the Shelter, and the Shelter accepted Appellant. The Shelter was identified because Appellant is not eligible for assisted living and he resided in the Shelter prior to his hospitalization which led to his admission to the Facility. Appellant does not believe he is an appropriate candidate for the Shelter because he claims he is not healthy, he needs assistance with dressing and bathing, and he cannot ambulate.

Much of Appellant's case involved complaints against the Facility wherein Appellant **alleges**: the Facility's failure to provide ██████████ during Appellant's first thirty days at the Facility (██████████ to ██████████ 2021) and instead providing ██████████ followed by ██████████ (Ex O); the Facility not allowing him to leave his bed or his room for exercise per his physician's orders and his requests; injuries caused by staff who escorted him, "██████████ on him, and removed safety guards on his bed followed by Appellant falling from his bed and sustaining a ██████████ injury; and staff taking his wheelchair and not returning it to him despite Appellant's demands for the wheelchair. (Ex K). These are complaints Appellant is already pursuing and they are not subject to this appeal of Respondent's ██████████ 2022 discharge notice.

Appellant testified about and presented evidence of services and devices he and his community treatment providers requested the Facility to provide. While Appellant's physician wanted the Facility to give Appellant free use of the gym and the bicycle for two hours per day (Ex P; Ex Q), and Appellant and his physician wanted Appellant to be provided with devices/tools in "the ██████████ ██████████" (Ex L; Ex R) the physician did not





██████████ / Brooklyn Center

The appeal by Appellant is therefore DENIED.

Respondent, Brooklyn Center for Rehabilitation and Nursing, is authorized to discharge Appellant in accordance with the ██████████ 2022 discharge notice. Appellant will be discharged with his rollator and the tools and devices Appellant was given during his stay at the Facility including those already given to Appellant from the “██████████ ██████████.” Respondent will provide Appellant with prescriptions for his medications, and a prescription for a rehabilitation evaluation in the community.

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  
July 6, 2022

*Ann Gayle*

---

Ann Gayle  
Administrative Law Judge

TO: ██████████ ██████████  
c/o Brooklyn Center for Rehabilitation and Nursing  
170 Buffalo Avenue  
Brooklyn, New York 11213

David Schorr, Administrator  
Brooklyn Center for Rehabilitation and Nursing  
170 Buffalo Avenue  
Brooklyn, New York 11213