

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan  
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# Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Acting Commissioner

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

March 13, 2023

**CERTIFIED MAIL/RETURN RECEIPT**

[Redacted] Appellant

Atif Sabur, Esq.  
Citadel Care Center  
1000 Gates Avenue  
Brooklyn, New York 11221

Lovette Nwaorgu, Director of Nursing  
New Riverdale Rehabilitation and Nursing  
641 West 230<sup>th</sup> Street  
Bronx, New York 10463

Ann Hock, Esq.  
VBPNP, LLP  
300 Garden City Plaza, Suite 100  
Garden City, New York 11530

**RE: In the Matter of [Redacted] – 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  
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

COPY

DECISION

██████████

Appellant,

from a determination by

New Riverdale Rehabilitation and Nursing

to discharge him from a residential health care facility.

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Before: Kimberly A. O'Brien  
Administrative Law Judge (ALJ)

Held at: Videoconference via WebEx

Date: March 8, 2023

Parties:

████████████████████  
██  
██

By: Pro Se\*  
\*With assistance from Anna Hock, Esq.  
Counsel for North Bronx Central Hospital

New Riverdale Rehabilitation and Nursing  
641 West 230<sup>th</sup> Street  
Bronx, New York 10463  
By: Atif Sabur, Esq.

New Riverdale Rehabilitation and Nursing (Respondent or facility) is a residential health care facility, also referred to in the New York State Department of Health (Department) Rules and Regulations as a nursing home and is licensed by the Department to provide regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. (New York Public Health Law (PHL) § 2801[2][3]; 10 New York Codes Rules, and Regulations (NYCRR) 415.2[k]).

On [REDACTED] 2022, Respondent issued a discharge notice stating that it determined to discharge [REDACTED] (resident) from the facility, and the resident's representative [REDACTED] (Appellant)<sup>1</sup> appealed the discharge determination to the New York State Department of Health (Department) pursuant to Title 10 of the New York Codes Rules, and Regulations (NYCRR) 415.3(i).

A notice of hearing was issued scheduling the hearing for March 8, 2023, at 10:00 am, via Webex. 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. 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. The Appellant appealed the discharge determination to the Department pursuant to 10 NYCRR 415.3(i).

Upon consent Anna Hock, Esq., Counsel for North Central Bronx Hospital (hospital or NCB), assisted the Appellant with the appeal and appeared at the hearing on behalf of Appellant.

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<sup>1</sup> [REDACTED] Appellant's [REDACTED] who also appeared at the hearing requested an interpreter for the Appellant. A certified interpreter, [REDACTED], was provided.

In advance of the hearing, Ms. Hock contacted the facility to arrange for the resident's return including securing the resident's insurance authorization to return. Ms. Hock also provided the facility, Appellant and the ALJ with the resident's entire hospital record, the Department's "Dear Administrator Letter-DAL-NH 19-07 Notice of Transfer or Discharge and Permitting Residents to Return" issued on August 20, 2019 (8/20/2019 DAL), and the Department's "Dear Administrator Letter-DAL-NH19-07 Notice of Transfer or Discharge and Permitting Residents to Return," which was reissued on October 11, 2022 (10/11/22 DAL)." The facility did not offer any exhibits (Ex.). The ALJ marked and admitted: ALJ Ex. 1 [REDACTED]/2022 Discharge Notice; and ALJ Ex. 2 - [REDACTED]/19 DAL and [REDACTED]/22 DAL. Lovette Nwaorgu, RN, DNP, Director of Nursing (DON Nwaorgu), testified on behalf of the facility. [REDACTED], M.D., a physician who has cared for the resident during his stay at NCB and is familiar with his record, testified on behalf of the Appellant. A transcript of the proceeding was made.

#### Findings of Fact

1. The resident, age [REDACTED] was admitted to the facility from [REDACTED] hospital in [REDACTED] 2022. [Testimony (T.) DON Nwaorgu].
2. On [REDACTED], 2022, the facility issued a discharge notice stating that "The continued safety of individuals in the facility would otherwise be endangered by your continued residency." The "Reason/Diagnosis" provided by the facility "Unmanageable unsafe behavior for which the resident was previously transferred to the hospital." The facility lists [REDACTED] 2022 as the discharge date and lists the hospital as the discharge location. [ALJ Ex. 1; T. DON Nwaorgu].
3. The Department issued "Dear Administrator Letter -DAL-NH 19-07 Notice of Transfer or Discharge and Permitting Residents to Return" advising nursing homes that a hospital is not a

discharge location and reissued the letter on [REDACTED] 2022 because the "Department has noted a significant uptick of Refusal to Readmit allegations in 2022." The facility is aware that the hospital is not a discharge location. [ALJ Ex. 2; T. DON Nwaorgu].

4. Upon admission to the hospital the resident's behavior evidenced an [REDACTED] ([REDACTED] The hospital provided the resident with a [REDACTED] evaluation, and he was found not to have an underlying [REDACTED] condition. The resident was diagnosed with a "[REDACTED] and [REDACTED] and was treated with [REDACTED] antibiotics and his [REDACTED] "reversed." The resident had a [REDACTED] [REDACTED] upon his admission to the hospital and his nutritional status was [REDACTED] For a time the resident required [REDACTED] to prevent him from [REDACTED]. The resident has not required [REDACTED] since [REDACTED] 2023. The resident is now taking food by mouth, he is gaining weight and his nutrition has improved. While the [REDACTED] is still in place it will likely be "reversed." [T. Dr. [REDACTED]

5. The facility has refused to readmit the resident and the resident remains in the hospital.

#### Issues

Has the Facility established that the resident's transfer/discharge is necessary and that the discharge plan is appropriate?

#### Discussion

The facility has provided nothing to support that the resident's transfer/discharge is necessary, and it has not provided a discharge plan. Dr. [REDACTED] testified that the resident is medically and psychiatrically stable, he does not require [REDACTED] he is "calm and cooperative with care," and he should not be in the hospital. The resident is bed bound and he requires assistance with all his activities of daily living and the facility is an appropriate placement.

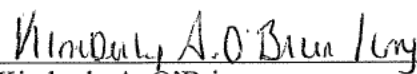
DON Nwaorgu was present during Dr. [REDACTED] testimony and confirmed that she reviewed the hospital record, and that she is aware that a hospital is not a discharge location. She testified that on [REDACTED] 2022 the resident was exhibiting “unsafe behavior” including that he was “[REDACTED],” and at one point he was [REDACTED]. The resident had just returned to the facility from [REDACTED] hospital and would not readmit him, so the facility transferred the resident to NCB. She said the Respondent is basing its decision not to readmit the resident because of the “unsafe behavior” he exhibited in [REDACTED] 2022, and her “belief” that the resident currently requires [REDACTED]. She testified that the Respondent operates a “no [REDACTED] facility,” and that the resident has had “many falls at the hospital” and requires [REDACTED] to keep him safe. DON Nwaorgu could not point to anything in the hospital record to support her “belief” that the resident currently requires [REDACTED] and that the facility cannot appropriately care for the resident.

#### Decision & Order

The discharge appeal is *GRANTED*. Respondent has failed to show that the discharge of resident, [REDACTED] is necessary and that its discharge plan was appropriate.

Pursuant to 10 NYCRR 415.3(i)(2)(i)(d), Respondent is *ORDERED* to readmit the resident into the facility.

DATED: Albany, New York  
March 13, 2023

  
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Kimberly A. O'Brien  
Administrative Law Judge

[REDACTED] Appellant  
[REDACTED]

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New Riverdale Rehabilitation and Nursing  
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Atif Sabur, Esq.  
Citadel Care Center  
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VBPNP, LLP  
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