



# Department of Health

**KATHY HOCHUL**  
Governor

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

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

February 24, 2023

## CERTIFIED MAIL/RETURN RECEIPT

██████ ██████  
c/o Dierdre Daniels, DSW  
Far Rockaway Center for Rehabilitation and Nursing  
13-11 Virginia Street  
Far Rockaway, New York 11691

Dierdre Daniels, DSW  
Far Rockaway Center for Rehabilitation and Nursing  
13-11 Virginia Street  
Far Rockaway, New York 11691

Mendel Hagler, Esq.  
Centers Health Care  
4770 White Plains Road  
Bronx, New York 10470

**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  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB: 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

Far Rockaway Center for Rehabilitation and Nursing,  
Respondent,

to discharge him from a residential health care facility.

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Before: Kimberly A. O'Brien  
Administrative Law Judge

Held at: Videoconference via WebEx

Date: February 22, 2023

Parties: ██████████ ██████████ Pro se

Far Rockaway Center for Rehabilitation and Nursing,  
13-11 Virginia Street  
Far Rockaway, New York 11691  
By: Mendel Hagler, Esq.



Decision

On [REDACTED], 2023, Far Rockaway Center for Rehabilitation and Nursing, (Respondent or facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), issued a discharge notice stating that it determined to discharge [REDACTED] [REDACTED] (Appellant or resident) from the facility and the resident 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).

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 facility offered six exhibits including exhibit (Ex.) A. [REDACTED]/23 Discharge Notice, Ex. B. Admission Record, Ex. C. Medicaid Budget Letter with Net Available Monthly Income (NAMI), Ex. D. Account Statement/Invoice, Ex. E Social Work Summary, Ex. F Social Work Progress Notes, which were all marked and admitted into evidence. Dierdre Daniels, Director of Social Work testified on behalf of the facility. The Appellant testified on his own behalf and Michael Fuller, CIDNY Ombudsman, offered support. A recording of the proceeding was made.

#### FINDINGS OF FACT

1. The Appellant has been a resident at the facility since [REDACTED] 2022. (Ex. B, Ex. E.)
2. The Appellant receives Medicaid coverage and is responsible for paying his net available monthly income (NAMI) to the facility. The facility provided the Appellant with a copy of his Medicaid Budget letter that states the amount of the NAMI. The facility has regularly communicated with the Appellant about his responsibility to pay his NAMI to the facility and he has been advised about the growing NAMI balance. (Testimony [T.] Daniels; Ex. C, D, E, F.)

3. In [REDACTED] 2022, the Appellant paid the facility approximately \$ [REDACTED] and he has not made any further payments. At the time of the hearing the Appellant owed the facility approximately \$ [REDACTED] (T. Daniels; Ex. D.)

4. The [REDACTED], 2022 Transfer/Discharge Notice (discharge notice) states that the transfer/discharge is necessary because the Appellant, after being given reasonable and appropriate notice, has failed to pay for his stay. (T. Daniels; Ex. A.)

5. The facility has proposed to transfer/discharge Appellant to another nursing home, [REDACTED], New York ([REDACTED]), which provides the same level of care. (T. Daniels; Ex. A.)

6. The Appellant has remained at the facility during the pendency of the appeal. (Ex. A.)

#### 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 415.3(i)(1)(i)(b), which states:

Transfer and discharge shall also be permissible when the resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare, Medicaid or third-party insurance) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only

allowable charges under Medicaid. Such transfer or discharge shall be permissible only if a charge is not in dispute, no appeal of a denial of benefits is pending, or funds for payment are actually available and the resident refuses to cooperate with the facility in obtaining the funds.

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 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.)

#### ISSUES

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

#### DISCUSSION

The hearing was originally scheduled to proceed on February 2, 2023. On this day the parties appeared and there was extensive prehearing discussion. Appellant asked for time to arrange to make payment and secure an alternative discharge location. The matter was adjourned to February 9, 2023, to give the parties an opportunity to negotiate a payment schedule and explore a discharge placement in Putnam County, New York, the Appellant's preferred discharge location. The February 9, 2023 hearing was adjourned to February 22, 2023, because the Appellant was admitted to the hospital for a few days.

On February 22, 2023 the parties appeared. A lengthy prehearing discussion revealed that the Appellant had not arranged to pay the facility, and that the facility sent referrals to twenty-one facilities in the Appellant's preferred area and the Appellant was not accepted to any of these facilities. The Appellant once again asked for "more time" to arrange to pay the facility and to secure an alternative discharge location. The Appellant said he will not go to [REDACTED] and will leave the facility "AMA"( against medical advice). The Appellant said he is working with "[REDACTED]" to secure housing in the community. Ms. Daniels stressed that securing an "[REDACTED]" placement takes time, and while she agreed to reach out to the Appellant's "[REDACTED]" caseworker "[REDACTED]" she does not believe a placement will be immediately available. Mr. Fuller said he believes that to remain eligible for an "[REDACTED]" placement the Appellant must be residing in a nursing home at the time a placement becomes available.

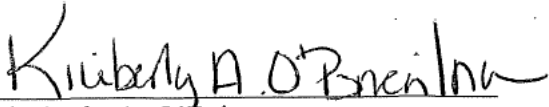
The ALJ advised the parties that the hearing would go forward; that the facility has shown it provided reasonable and appropriate notice to the Appellant that he is required to pay his NAMI to the facility, and he has failed to pay for his stay; and that the proposed discharge plan is appropriate, as it is available and provides the same level of care. (See FOF 1-5.)



#### DECISION

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

1. Respondent is authorized to discharge the Appellant in accordance with its [REDACTED] [REDACTED] 2023 discharge notice on or after [REDACTED], 2023.
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: Albany, New York  
February 23, 2023

  
Kimberly A. O'Brien  
Administrative Law Judge

To:    
c/o Dierdre Daniels, DSW  
Far Rockaway Center for Rehabilitation and Nursing  
13-11 Virginia Street  
Far Rockaway, New York 11691

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Mendel Hagler, Esq.  
Centers Health Care  
4770 White Plains Road  
Bronx, New York 10470

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