

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



Department of Health

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

May 19, 2023

CERTIFIED MAIL/RETURN RECEIPT

■■■■
c/o The New Jewish Home Manhattan Division
120 W. 106th Street
New York, NY 10025

Meg Bondy
The New Jewish Home Manhattan Division
120 W. 106th Street
New York, NY 10025

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

-----X
 In the Matter of an Appeal, pursuant to :
 10 NYCRR § 415.3, by :
 :
 [Redacted] :
 :
 Appellant, :
 :
 from a determination by :
 :
 THE NEW JEWISH HOME :
 MANHATTAN DIVISION :
 :
 Respondent, :
 :
 to discharge him from a residential health :
 care facility. :
 -----X

COPY

DECISION

Hearing Before: Matthew C. Hall
 Administrative Law Judge

Held at: Via WebEx

Hearing Date: April 12, 2023

Parties: The New Jewish
 Home Manhattan Division
 120 W. 106th Street
 New York, NY 10025
 By: Meg Bondy

[Redacted]
 By: Pro Se

JURISDICTION

By notice dated [REDACTED], 2023, The New Jewish Home Manhattan Division (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and Discharge Notice
Facility Exhibits: 1 - Patient Summary
2 - Note from Attending Physician
Facility Witnesses: Meg Bondy - Director of Social Work
Appellant's Exhibits: None
Appellant's Witness: Appellant testified on his own behalf

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 refer to testimony (T.) of witnesses and exhibits (Ex.) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant is an [REDACTED]-year-old man who was admitted to the Facility on [REDACTED], 2023. (Ex. 1.)

2. He was originally admitted from [REDACTED] Hospital for short term care after falling and [REDACTED] [REDACTED] [REDACTED]. (Ex. 1.)

3. By notice dated [REDACTED] 2023, the Facility determined to discharge the Appellant on [REDACTED], 2023, because his "health improve(d) sufficiently so that the Resident no longer needs the services of the Facility." (ALJ I.)

4. As of the date of this hearing, the Appellant had reached his rehabilitation goals. He was able to ambulate independently without an assistive device and could walk even farther with the assistance of a cane. He was completely independent in all Activities of Daily Living (ADLs) such as toileting, bathing, dressing, grooming and hygiene. He was medically stable and alert and oriented [REDACTED] with a BIMS score of [REDACTED]/15. (Ex. 1,2; T. Bondy.)

5. Pursuant to the [REDACTED] [REDACTED] 2023 discharge notice, the Facility determined to discharge the Appellant to the [REDACTED] Shelter located at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Ex. 1.)

6. Prior to being admitted to the hospital and then transferred to the Facility, the Appellant was "undomiciled." (Ex. 2, T. Bondy.)

7. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending Physician and Director of Social Work, that discharge to the community, including to a [REDACTED] Shelter, is appropriate. (Ex. 1,2; T. Bondy.)

8. The Appellant remains at the Facility pending the outcome of this appeal.

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. Public Health Law §§ 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 Resident's discharge is permissible pursuant to 10 NYCRR § 415(i)(1)(i)(a)(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.

Under the hearing procedures at Title 10 NYCRR §415.3(i)(2)(iii), the Facility bears the burden to prove a discharge necessary and appropriate. Under the New York State Administrative Procedures Act (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; 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 (3rd Dept. 1984), appeal dismissed 63 N.Y.2d 649.

DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] [REDACTED] 2023 for short term care after falling and [REDACTED]

At the time of his admission to the Facility, the Appellant required assistance with his ADLs, including ambulating, transferring, and showering. By [REDACTED] [REDACTED], 2023, however, the Appellant's abilities significantly improved, and he became independent in all ADLs. He is able to walk limited distances by himself and is able to ambulate farther with the use of a cane. He has no further need for rehabilitation. It is the opinion of the professionals from all Facility disciplines, including Dr. Imran, the Appellant's attending physician, that the Appellant may be safely discharged from the Facility to the [REDACTED] Shelter in New York. (Ex. 1,2; T. Bondy.)

The Appellant no longer needs skilled nursing care. Accordingly, the Facility has proven that its determination to discharge the Appellant is correct.

As discussed above, prior to his stay in a hospital and his transfer to the Facility, the Appellant previously was "undomiciled." (Ex. 2.; T. Bondy.) The Facility has made efforts to find housing for the Appellant in an assisted living facility (ALF) and has in fact, located an ALF that was willing to accept

him as a resident. However, the Appellant has rejected that option, leaving only an opportunity to be placed in the [REDACTED] Shelter. (T. Bondy, [REDACTED])

Accordingly, the Facility has proven that its determination to discharge the Appellant to the [REDACTED] Shelter is appropriate.


DECISION

The New Jewish Home Manhattan Division has established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate.

The New Jewish Home Manhattan Division is authorized to discharge the Appellant in accordance with the [REDACTED] [REDACTED] 2023, Discharge Notice.

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: Albany, New York
May 19, 2023


Matthew C. Hall
Administrative Law Judge

To:

■■■■ ■■■■
c/o The New Jewish Home Manhattan Division
120 W. 106th Street
New York, NY 10025

Meg Bondy
The New Jewish Home Manhattan Division
120 W. 106th Street
New York, NY 10025