

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.**  
Commissioner

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

July 13, 2023

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Spring Creek Rehabilitation and  
Nursing Care Center  
660 Louisiana Avenue  
Brooklyn, New York 11239

Barbara Phair, Esq.  
3 Dakota Drive  
Lake Success, New York 11042

**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: cmg  
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

**Spring Creek Rehabilitation and  
Nursing Care Center,**

Respondent,

to discharge her from a residential  
health care facility.

COPY

DECISION

#DA23-6079

Hearing before: John Harris Terepka  
Administrative Law Judge

Hearing date: July 13, 2023  
By videoconference

Parties: Spring Creek Rehabilitation and Nursing Care Center  
600 Louisiana Avenue  
Brooklyn, New York 12239  
[carleenk@springcreekrehab.com](mailto:carleenk@springcreekrehab.com)  
By: Barbara Stegun Phair, Esq.  
3 Dakota Drive  
Lake Success, New York 11042  
[bphair@abramslaw.com](mailto:bphair@abramslaw.com)

██████████  
Spring Creek Rehabilitation and Nursing Care Center

JURISDICTION

Spring Creek Rehabilitation and Nursing Care Center (the Respondent), a residential health care facility subject to Article 28 of the Public Health Law, determined to discharge [REDACTED] (the Appellant) from care and treatment in its nursing home. Pursuant to 10 NYCRR 415.3, the Appellant appealed the discharge determination to the New York State Department of Health.

HEARING RECORD

Respondent witnesses:	Dr. Hanan Miller Yvette Crumity, RN nurse manager Megan Kennedy, director of rehabilitation Josephine Ricketts, Medicaid coordinator Ari Ungar, administrator Carleen Kennedy, director of social work
Respondent exhibits:	1-4
Appellant witnesses:	[REDACTED]
Appellant exhibits:	none
ALJ Exhibit:	ALJ Exhibit I (notice of hearing and discharge notice)

The hearing was held and recorded by videoconference. (0h58m.)

SUMMARY OF FACTS

- Respondent Spring Creek Rehabilitation and Nursing Care Center is a residential health care facility (RHCF), specifically a nursing home within the meaning of PHL 2801.2 and 10 NYCRR 415.2(k), located in Brooklyn, New York.
- Appellant [REDACTED], age [REDACTED] was admitted to the facility in [REDACTED] 2022 for rehabilitation after hospitalization. Her diagnoses included [REDACTED] and [REDACTED]. (Exhibit 1.)
- By notice dated [REDACTED], 2023, the Respondent advised the Appellant and her designated representative, [REDACTED] [REDACTED] that it had determined to discharge her on

, 2023 on the grounds that she has failed, after reasonable and appropriate notice, to pay for her stay. (Exhibit ALJI.)

4. The Appellant has been responsible for the cost of her nursing home care since her Medicare coverage ended in July 2022. (Exhibit 4, pages 8-10.) She has failed and refused to pay her charges and refuses to apply for Medicaid. (Exhibit 4.) As of 2023 she owes the facility \$ (Exhibit 3.) She has been regularly notified of her charges and they are not in dispute, nor is there any pending appeal of a denial of benefits. (Testimony of Josephine Ricketts, Ari Ungar.)

5. The discharge notice advised the Appellant she would be discharged to her home in where she was living before her hospitalization. Her who is her designated representative, also lives at this address. The discharge plan includes transportation, appropriate referrals for home care, therapy and community services, a supply of medications and prescriptions, any needed durable medical equipment, and arrangements for continuing medical care. (Exhibit 4; Testimony of Carleen Kennedy.)

6. The Appellant is not in need of nursing home care. She is independent with a walker and her other care needs can be met at home. Her treating physician and interdisciplinary care team at the facility have documented in the resident record that she no longer needs the services provided by the facility and that she can safely be discharged home. (Exhibits 1, 2; Testimony of Hanan Miller, Yvette Crumity, Megan Kennedy.)

7. The Appellant remains at Spring Creek pending the outcome of this proceeding.

### ISSUES

Has the Respondent established that the transfer is necessary and the discharge plan appropriate?

### APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, 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. PHL 2801; 10 NYCRR 415.2(k). Transfer and discharge rights of nursing home residents have been codified in Public Health Law 2803-z and set forth at 10 NYCRR 415.3(i).

Transfer and discharge are 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. 10 NYCRR 415.3(i)(1)(i)(b). The facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility, in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge. 10 NYCRR 415.3(i)(1)(vi). The facility must also permit residents and their representatives the opportunity to participate in deciding where the resident will reside after discharge. 10 NYCRR 415.3(i)(1)(vii). The facility has the burden of proving that the discharge or transfer is necessary and the discharge plan appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).

### DISCUSSION

Grounds for discharge. The Appellant's charges at Spring Creek were initially covered under Medicare, but this coverage ended in [REDACTED] 2022 and there are no pending appeals for any denial of coverage for the cost of her care. She has been urged to apply for Medicaid but refuses to do so. She has been repeatedly advised by the Respondent of

her charges but has repeatedly failed and refused to pay them or arrange to have them paid. At this hearing she reiterated her refusal to apply for Medicaid.

The charges due since [REDACTED] 2022 are not in dispute and there is no appeal of any denial of benefits pending. The Respondent is understandably unwilling and is not obligated to accept the Appellant's proposal to pay off her \$ [REDACTED] bill at \$ [REDACTED] per month, which would take over [REDACTED] years. The Respondent has met its burden of establishing valid grounds for discharge pursuant to 10 NYCRR 415.3(i)(1)(i)(b). Blue v. Zucker, 192 AD3d 1693, 145 NYS3d 732 (2021).

Discharge plan. The Respondent has afforded the Appellant ample opportunity to participate in the development of a discharge plan and has made extensive efforts over the last year to assist and work with her on a plan. (Exhibit 4.)

The Appellant does not question the Respondent's care team determination that she can be safely discharged back to her home where she lived before her hospitalization and where her [REDACTED] also still lives. She has, over the last several months, repeatedly expressed her intention and willingness to return home, but each time the Respondent has attempted to implement the discharge she has made excuses and refused to go. (Exhibit 4.) She has not proposed any alternative discharge plan, nor has she asked the Respondent to assist her by exploring any other options. At the hearing, she yet again stated that she agrees with the Respondent's plan and wants to be discharged back home as soon as possible.

An appropriate discharge plan, which includes referrals for ongoing medical care, transportation, necessary equipment, and other logistical assistance in order to effectuate a safe transfer, has been in place since [REDACTED] 2022. The proposed discharge to her home


fulfills the Respondent's obligation to provide a discharge plan that addresses the Appellant's medical needs.

**DECISION:** Respondent Spring Creek Rehabilitation and Nursing Care Center has established valid grounds for the discharge of Appellant [REDACTED] and has established that the discharge plan is appropriate.

The Respondent is authorized to discharge the Appellant in accordance with the [REDACTED] 2023 discharge notice.

This decision is made by John Harris Terepka, Bureau of Adjudication, who has been designated to make such decisions.

Dated: Rochester, New York  
July 13, 2023



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John Harris Terepka  
Administrative Law Judge  
Bureau of Adjudication