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# Department of Health

**KATHY HOCHUL**  
Governor

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

**JOHANNE E. MORNE, M.S.**  
Acting Executive Deputy Commissioner

October 4, 2023

**CERTIFIED MAIL/RETURN RECEIPT**

[REDACTED]  
c/o The Grove at Valhalla  
61 Grasslands Road  
Valhalla, New York 10595

Sunni Herman, NHA  
The Grove at Valhalla  
61 Grasslands Road  
Valhalla, New York 10595

Eric Cohen, Esq.  
(BY EMAIL ONLY)

**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

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

[REDACTED]

Appellant,

from a determination by

The Grove at Valhalla

Respondent,

to discharge her from a residential health care facility.

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**COPY**

DECISION

Hearing Before: Jean T. Carney  
Administrative Law Judge

Held via: Cisco WebEx videoconference

Hearing Date: September 15, 2023

Parties: [REDACTED], Appellant, *pro se*

The Grove at Valhalla, Respondent  
By: Sunni Herman, Administrator  
Eric Cohen, Esq.

## JURISDICTION

By notice dated [REDACTED] 2023, The Grove at Valhalla (Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant or Resident) from the Facility on the grounds that her health has improved sufficiently so she no longer needs the services provided by the facility. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i).

## HEARING RECORD

In support of its determination, the Facility presented documents (Exhibits A, B, and D-G) and the testimony of Wanda Feliciano, Social Worker. The Appellant testified in her own behalf and presented a document (Exh 1). Leah Joseph, Ombudsman, was also present. The hearing was digitally recorded and made part of the record.

## ISSUES

Has the Facility established that the Appellant's discharge is necessary and discharge plan is appropriate?

## FINDINGS OF FACT

Citations in parentheses refers to the testimony of the witness ("T") at the hearing and exhibits ("Exh") found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejected in favor of the cited evidence. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is an [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2023, for short term care after hospitalization for [REDACTED]. (Exhs B and D).

2. The Appellant is medically cleared for discharge, independent in her activities of daily living (ADLs), and her cognition is intact, scoring [REDACTED] on her Brief Interview for Mental Status (BIMS) dated [REDACTED], 2023. (Exhs E and F).

3. The Appellant agrees with her treatment team that she is ready to be discharged, and that an assisted living facility (ALF) would be an appropriate discharge location. (Exh E; T [REDACTED] and Feliciano).

4. Prior to her hospitalization, the Appellant was [REDACTED]. The Facility arranged for her [REDACTED] to the Facility from the hospital, and has also agreed to [REDACTED] to the discharge location. (Exh D; T Feliciano).

5. The Facility began discharge planning with the Appellant on or about [REDACTED] 2023. Ms. Feliciano met numerous times with the Appellant, made referrals to several ALFs. The Appellant was accepted at two appropriate ALFs. (Exh A; T Feliciano).

6. The Appellant rejected both discharge locations because she was concerned about the costs, and having enough resources to pay her bills. (Exh A; T [REDACTED]).

#### APPLICABLE LAW

A residential health care facility, also referred to 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] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(1)(i)(a), a resident may only be discharged when the interdisciplinary care team determines that:

- (1) the transfer of discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at

accommodation in the facility;

(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;

(3) the safety of individuals in the facility is endangered; or

(4) the health of individuals in the facility is endangered.

Additionally, 10 NYCRR § 415(i)(1)(ii) requires that the facility ensures complete documentation in the resident's clinical record when transferring or discharging a resident under the above circumstances. The documentation shall be made by:

(a) the resident's physician and, as appropriate, interdisciplinary care team, when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; and

(b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph.

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). 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 [3<sup>rd</sup> Dept. 1984], *appeal dismissed* 63 N.Y.2d 649[1984]).

## DISCUSSION

The parties agree that the Appellant's health has improved sufficiently so she no longer needs the services provided by the Facility. The only issue in dispute is whether the discharge plan is appropriate. A discharge plan must "[address] the medical needs of the resident and how these will be met after discharge." (10 NYCRR § 415.3[i][1][vi]). The evidence establishes that the Appellant's medical needs can be met in an ALF, and she has been accepted at two ALFs appropriate to meet her needs.

The Facility worked with the Appellant to find an appropriate ALF. Several tours were arranged for the Appellant to tour the proposed facilities. The Appellant expressed concern about the costs associated with being discharged to an ALF, stating that she did not think she would be able to pay her other bills. The evidence demonstrates that the Appellant is co-insured by Medicaid and Medicare, and receives Social Security. After the costs of the Appellant's care are deducted, the Appellant would receive approximately [REDACTED] to cover her personal costs. The Appellant did not submit any evidence to show that her personal needs would exceed that amount.


When the Appellant raised a concern about having to share a room with someone else, the Facility worked with the [REDACTED] to secure a private room for her. Yet the Appellant still refused to be discharged. In conclusion, the evidence establishes that the discharge plan addresses the Appellant's medical needs and how they will be met after discharge. The evidence also establishes that the Facility has worked with the Appellant to find an acceptable discharge location.

## ORDER


The Grove at Valhalla has established that its determination to discharge the Appellant is necessary, and that transfer to [REDACTED], or another similarly appropriate Assisted Living Facility, is appropriate.

1. The Facility is authorized to discharge the Appellant pursuant to the Discharge Notice.
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:**     **October 4, 2023**  
                  **Albany, New York**

  
**JEAN T. CARNEY**  
**Administrative Law Judge**

**TO:**   Sunni Herman, Nursing Home Administrator  
          The Grove at Valhalla  
          61 Grasslands Road  
          Valhalla, New York 10595  
          sherman@thegroverehab.com

  
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