

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

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

October 26, 2023

### CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Shoshana Hall, Social Worker  
Beach Gardens Rehab & Nursing Center  
17 11 Brookhaven Avenue  
Far Rockaway, New York 11691

Jessica Scholes, Esq.  
Disability Rights New York  
279 Troy Road, Suite 9  
PMD 236  
Rensselaer, New York 12144

Barbara Phair, Esq.  
Abrams Fensterman LLP  
3 Dakota Drive, Suite 300  
Lake Success, New York 11042

Gina Solamita, Administrator  
Beach Gardens Rehab & Nursing Center  
17 11 Brookhaven Avenue  
Far Rockaway, New York 11691

**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

COPY

██████████,  
Appellant,

DECISION

from a determination by

BEACH GARDENS REHABILITATION & NURSING CENTER

to discharge her from a residential health care facility.

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Before: Kimberly A. O'Brien  
Administrative Law Judge

Held at: Videoconference via WebEx

Dates: October 4, 2023 & October 12, 2023

Parties: ██████████  
c/o Shoshana Hall, Social Worker  
Beach Gardens Rehabilitation & Nursing Center  
17 11 Brookhaven Avenue  
Far Rockaway, New York 11691  
By: Jessica Scholes, Esq.  
Disability Rights New York  
279 Troy Road, Suite 9  
PMD 236  
Rensselaer, New York 12144  
jessica.scholes@drny.org

Gina Solamita, Administrator  
Beach Gardens Rehabilitation & Nursing Center  
17 11 Brookhaven Avenue  
Far Rockaway, New York 11691  
By: Barbara Phair, Esq.  
Abrams Fensterman LLP  
3 Dakota Drive, Suite 300  
Lake Success, New York 11042  
bphair@abramslaw.com

By notice dated [REDACTED] 2023, Beach Gardens Rehabilitation & Nursing Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] (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).

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 presented nine exhibits and four witnesses: Irina Natalenko, M.D.; Micheline Numa, Director of Rehabilitation Services; Gina Solamita, Administrator; Shoshana Hall, Social Worker; Sasha Cleary, DON. The Appellant presented five exhibits and testified on her own behalf. A digital recording was made of the proceeding.

#### FINDINGS OF FACT (FOF)

1. The Appellant is a [REDACTED]-year-old female who was admitted for short term care to the Facility on [REDACTED] 2019. [Exhibit (Ex.) 2]

2. The Appellant's diagnoses include [REDACTED]. Her "Active Diagnoses" include: "[REDACTED] [REDACTED]." She uses a rollator walker and is "at risk of developing pressure ulcers/injuries." The Appellant requires assistance with activities of daily living (ADLs) including supervision/setup and or physical assistance with dressing, grooming, bathing, toileting, transfers,

and ambulation. [Facility Ex. 2 at page 10, Ex. 3 at page 3, Ex. 4; Appellant Ex. 2A, Ex. 2B, Ex. 2C at page 11, 23, 29, 31, Ex. 3].

3. On [REDACTED] 2023, the Facility issued a Transfer/Discharge Notice (Discharge Notice) to the Appellant. The Discharge Notice states that the Appellant will be transferred because the Appellant's health has improved sufficiently such that the Appellant no longer requires the services of the facility. The proposed discharge is to [REDACTED] Shelter, [REDACTED], [REDACTED] (shelter). [Appellant Ex. 1.]

4. Appellant timely appealed the Facility's discharge determination and proposed discharge location. The Appellant has remained at the Facility during the pendency of the appeal.

#### ISSUES

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

#### 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(i)(1)(i)(a)(2), which states:

"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 10 NYCRR 415.3(i)(2)(iii)(b), the Facility bears the burden to prove a discharge is necessary and the discharge plan is appropriate. Under SAPA §306(1), a decision in an administrative proceeding must be in accordance with substantial evidence.

#### DISCUSSION

The Facility's [REDACTED] 2023 Discharge Notice states that the Appellant's health has improved, she no longer requires the services it provides and proposes that the Appellant be discharged to the shelter on [REDACTED], 2023. Ms. Hall testified that the Appellant has no income, and the shelter is the only available discharge location. The Facility's [REDACTED] and [REDACTED] 2023 records, which document the care and assistance Appellant receives at the Facility, show that the Appellant continues to require supervision, set up and or physical assistance with her ADLs [FOF 2.] While the Facility's own records reflect that the Appellant uses a rollator walker and is not independent with her ADLs, the Facility completed a shelter application for the Appellant on [REDACTED] 2023 indicating that she was independent with her ADLs. The Facility did not document that the Appellant uses a rollator walker, when there is a specific question on the application about durable medical equipment; and answered "Yes" to [REDACTED] questions about the Appellant's independence with her ADLs, which resulted in a score of [REDACTED]. [Facility Ex. 7.] The Appellant was approved to be admitted to the shelter based on her score of [REDACTED] [Facility Ex. 8.] The shelter application states that if the answer is "No" to any of the 12 questions, which would result in a score less than 12, "the patient is not appropriate for the shelter." [Facility Ex.7 at page 5.] After the first day of hearing, the Facility emailed the shelter and apprised them that the Appellant uses a rollator walker and asserted that she "is capable of completing stairs independently." [Facility Ex. 9 at page 2.] The shelter confirmed that the Appellant "is Approved"

for intake with the rollator walker provided that she is “able to complete all her ADL’s Independently.” [Facility Ex. 9 at page 1.] The Facility’s misrepresentation of the Appellant’s ability to independently complete her ADL’s does not make it so.

The Appellant testified that she needs the care provided by the Facility. She has very little energy and spends most of the day in bed. At one time she lived in the shelter and explained that each day the shelter requires the residents to leave the shelter from approximately 9:00am to 5:00pm. When she lived there, she went to an employment center each day, and she eventually found a job. She continued to live in the shelter, saved money and eventually was able to rent a room in the community, which is where she lived before coming to the Facility. The Appellant testified that she is now unable to work and has no source of income. She is not capable of leaving the shelter during the day. The shelter has a lot of stairs, she can only manage a few steps at a time, must rest for several minutes before attempting the next few steps, and she cannot carry her walker up the stairs. At the shelter you have to stand online to get your meals and she cannot carry her tray with the walker.

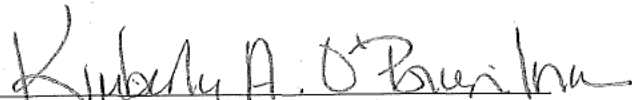
The record reflects that the Appellant is not independent with her ADL’s and the shelter cannot accommodate her unless she is independent with all her ADLs. The Facility has failed to meet its burden to show that the Appellant’s health has improved sufficiently such that she no longer needs the services it provides and that the proposed discharge to the shelter is appropriate to meet the Appellant’s needs.

#### DECISION

The Facility has failed to establish that its determination to discharge the Appellant was correct, and that its discharge/transfer location is appropriate.

1. The appeal is GRANTED, the Facility is not authorized to discharge the Appellant.
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  
October 26, 2023

  
Kimberly A. O'Brien  
Administrative Law Judge