



## Department of Health

**ANDREW M. CUOMO**  
Governor

**HOWARD A. ZUCKER, M.D., J.D.**  
Commissioner

**LISA J. PINO, M.A., J.D.**  
Executive Deputy Commissioner

January 27, 2021

### CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Buffalo Center for Nursing and  
Rehabilitation Center  
1014 Delaware Avenue  
Buffalo, New York 14209

Carmelita Lowery  
Buffalo Center for Nursing and  
Rehabilitation Center  
1014 Delaware Avenue  
Buffalo, New York 14209

**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,

James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: 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

**Buffalo Center for Rehabilitation  
and Nursing,**

Respondent,

to discharge him from a residential  
health care facility.

---

**COPY**

**DECISION**

Hearing Before: John Harris Terepka  
Administrative Law Judge

Hearing Date: January 25, 2021  
By videoconference

Parties: Buffalo Center for Rehabilitation and Nursing  
1014 Delaware Avenue  
Buffalo, New York 14209  
By: Carmelita Lowery, director of social work

██████████, *pro se*

**JURISDICTION**

Buffalo Center for Rehabilitation and Nursing (the Respondent), a residential health care facility subject to Article 28 of the Public Health Law, determined to discharge ██████████ (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: Kristen Ahrens, physical therapist  
 Lauryn Betancourt, business supervisor  
 Diane Flack, nurse manager  
 Margaret Scherer, physician assistant

Respondent exhibits: 1-6

Appellant witnesses: [REDACTED]

Appellant exhibits: A

ALJ Exhibit: ALJ Exhibit I (notice of hearing and discharge notice)

The hearing was held and recorded by videoconference. (1h27m.)

**SUMMARY OF FACTS**

1. Respondent Buffalo Center for Rehabilitation and Nursing is a residential health care facility (RHCF), or nursing home, located in Buffalo, New York.
2. Appellant [REDACTED], age [REDACTED] was admitted to the facility in [REDACTED] 2018 for rehabilitation after hospitalization for an [REDACTED]. He is a [REDACTED], with diagnoses including [REDACTED]. (Exhibit 6.)
3. By notice dated [REDACTED] 2021, the Respondent advised the Appellant that it had determined to discharge him on [REDACTED] 2021, on the grounds that his health has improved sufficiently that he no longer needs the services provided by the facility. (Exhibit ALJ I.)
4. The Appellant is not in need of nursing home care. He is independent in his wheelchair and is independent in all care needs. He has been discharged from both physical and occupational therapy at the nursing home. All of his medical needs can be met on an outpatient basis. (Exhibits 1, 4, 5.)

5. The Appellant's treating physician and interdisciplinary care team at the facility have documented in the resident record that he no longer needs the services provided by the facility, and that he is medically stable for discharge to a hotel. (Exhibits 1, 4, 5.)

6. The discharge notice advised the Appellant he would be discharged to the [REDACTED], a motel in [REDACTED]. (Exhibit ALJ I.) One week's rent will be paid by the Respondent. The motel is handicap and wheelchair accessible, and meal delivery service is available.

7. The discharge plan includes appropriate referrals for home health care services, medical care and ongoing housing assistance. The Appellant will leave the facility with a supply of his medications and arrangements in place for his continuing medical care. Housing and social services assistance from the Erie County Department of Social Services will continue to be available. (Exhibit 1.)

8. The Appellant remains at the Respondent facility 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 RHCF residents are set forth in Department regulations. A resident may be transferred when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that 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. 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

The Appellant's treating physical therapist, nurse manager, and physician assistant at the facility all testified for the Respondent. They confirmed the documentation in the patient record, which includes a note from the facility's treating physician, Dr. Mikac, stating that the Appellant is no longer in need of nursing home care. The Appellant offered a letter from his infection control specialist, Dr. Hocko, which stated "I consider this patient too unstable to be discharged into the community." Dr. Hocko's letter goes on to state "patient should not be discharged from the nursing facility," but it does not state that he continues to require nursing home care. (Exhibit A.) The Respondent's care team conducted significant additional testing and treatment in response to all concerns expressed in Dr. Hocko's letter. Facility documentation and the testimony of physician assistant Margaret Sherer that the Appellant's medical conditions can be managed on an outpatient basis and do not require continuous nursing home care, persuasively outweigh this letter to the extent it suggests that nursing home care is medically necessary at this time.

Facility records and the testimony of the facility's discharge planners show that the Appellant has been independent for his care needs since at least late 2018. (Exhibit 4; Testimony of Diane Flack, LPN.) He regularly attends a [REDACTED] which has offered assistance in finding housing. (Exhibit 1, page 4, 6.) Referral for an evaluation for home health care services and any necessary equipment is part of the discharge plan. Referrals to the Erie County Department of Social Services and to Western New York Independent Living, for housing assistance, are also part of the discharge plan.

The Respondent's discharge planners have made efforts to identify alternative discharge locations and to involve the Appellant in discharge planning, but the Appellant has not always been cooperative in completing paperwork and pursuing referrals. (Exhibit 2, page 1; Exhibit 1, page 8.) The [REDACTED] is wheelchair accessible and the Respondent agrees to pay for a one week stay. Erie County Department of Social Services will assume responsibility for further long-term housing assistance. Efforts by the county and Western New York Independent Living to find permanent housing for the Appellant will continue but will require his cooperation.

The Respondent's obligation is to provide a discharge plan that meets the Appellant's needs, not necessarily the discharge plan of the Appellant's choice. The Appellant is not in need of nursing home care, and while he faces challenges in finding long term living arrangements, he has received the appropriate referrals for assistance. Under these circumstances, the Respondent's plan is an appropriate and safe discharge plan and the Respondent is entitled to proceed with it.

At the hearing the Appellant asked for "more time," suggesting "a month or two" in order to find a more permanent living arrangement. The Respondent indicated a

willingness to work a little longer with him. The discharge date will accordingly be extended from ██████████ to ██████████.

**DECISION:**

Respondent Buffalo Center for Rehabilitation and Nursing has established valid grounds for the discharge of Appellant ██████████ and has established that the discharge plan is appropriate.

The Respondent is authorized to discharge the Appellant on ██████████, 2021.

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

Dated: Rochester, New York  
January 26, 2021



---

John Harris Terepka  
Administrative Law Judge  
Bureau of Adjudication