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# Department of Health

KATHY HOCHUL  
Governor

MARY T. BASSETT, M.D., M.P.H.  
Commissioner

KRISTIN M. PROUD  
Acting Executive Deputy Commissioner

November 3, 2022

## CERTIFIED MAIL/RETURN RECEIPT

Patricia Constantine, DON  
Citadel Rehabilitation and Nursing Center  
3400-26 Cannon Place  
Bronx, New York 10463

██████████  
c/o Citadel Rehabilitation and Nursing Center  
3400-26 Cannon Place  
Bronx, New York 10463

**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

██████████

Appellant,

from a determination by  
CITADEL REHABILITATION and NURSING CENTER  
at KINGSBRIDGE

Respondent,

to discharge him from a residential health care facility

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DECISION

Hearing Before: Jean T. Carney  
Administrative Law Judge (ALJ)

Held via: Cisco WebEx videoconference

Hearing Date: November 1, 2022

Parties: Citadel Rehabilitation and Nursing Center, Respondent  
By: Patricia Constantine, Director of Nursing  
patriciac@citadelcarecenters.com

██████████ Appellant, *Pro se*

### JURISDICTION

By notice dated [REDACTED], 2022, Citadel Rehabilitation and Nursing Center at Kingsbridge (Citadel or Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant) from the Facility on the grounds that the Appellant's condition had sufficiently improved so that he no longer needed the services provided by the Facility. The proposed discharge location is to the [REDACTED] Shelter (Shelter), [REDACTED] New York. 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 1-6) and the testimony of Patricia Constantine, Director of Nursing (DON); and Sally Lebron, Director of Social Services. The Appellant was present but did not testify. ALJ Exhibits I and II were admitted; and the hearing was digitally recorded.

### 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 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 a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2022 from [REDACTED] Hospital for short term rehabilitation, with relevant diagnoses of [REDACTED]. (Exhs II and 3).

2. The Appellant was discharged from occupational and physical therapies on [REDACTED] 2022. (Exhs 1 and 2).

3. The Facility determined to discharge the Appellant to the Shelter; but scheduled a meeting with an assisted living facility (ALF) after the Appellant expressed an interest in that discharge option. The Appellant did not attend the meeting, and the facility made no further attempts in discharge planning. (T Lebron).

4. The Facility presented no evidence that the Appellant has been medically cleared for discharge. The Facility presented no evidence indicating that the Appellant was accepted for shelter placement. (Exh 1-6; T Lebron and Constantine).

#### 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.

Before it transfers or discharges a resident, the facility must notify the resident of the transfer or discharge, and record the reasons in the clinical record. (10 NYCRR § 415.3[i][1][iii]). The written notice must include the reason for the transfer or discharge, the specific regulations that support the action, the effective date of the transfer and the location to which the resident will be discharged. (10 NYCRR § 415.3[i][1][v]).

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 Facility failed to meet its burden of showing that the discharge is necessary, and the plan is appropriate. The clinical records presented by the Facility fail to document the reasons for the proposed discharge; and fail to document a physician confirming the discharge being appropriate.

The physician note refers to post-discharge recommendations, but there is no clear and complete record indicating that the Appellant is medically cleared to be discharged, and that the discharge location is appropriate. (Exh 3). The occupational therapy discharge summary is inconsistent, stating the Appellant may safely return to an ALF yet noting the discharge location as a shelter. (Exh 2). The Facility presented no testimony or other evidence to explain this inconsistency. The physical therapy discharge summary recommends "Remove environmental barriers and Assistive device for safe functional mobility". (Exh 1). However, the facility did not present any testimony or other evidence to explain how this would be accomplished in a shelter.


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 Facility presented no evidence to support its assertion that the shelter is an appropriate discharge location. The record does not reflect whether the Appellant has been accepted at the shelter, or if an application to the shelter system was made. Additionally, the facility made only a minimal attempt to explore other discharge options with the Appellant. When the Appellant failed to attend the zoom meeting with an umbrella organization representing five ALFs, the Facility did not attempt to re-schedule, or reach out to other ALFs in the area, or explore other services that may assist the Appellant.

ORDER

Citadel has failed to establish that the Appellant's discharge is necessary, and its discharge plan is appropriate.

1. The Appellant may not be discharged pursuant to the notice dated [REDACTED], 2022.
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  
November 3, 2022

  
JEAN T. CARNEY  
Administrative Law Judge

TO: Patricia Constantine, DON  
Citadel Rehabilitation and Nursing Center  
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Bronx, New York 10463  
patriciac@citadelcarecenters.com

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