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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 4, 2022

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Upper East Side Rehabilitation and  
Nursing Center  
211 East 79<sup>th</sup> Street  
New York, New York 10021

Christina Catalano, SW  
Upper East Side Rehabilitation and  
Nursing Center  
211 East 79<sup>th</sup> Street  
New York, New York 10021

Katie Barbieri, Esq.  
Cassena Care  
225 Crossways Park Drive  
Woodbury, New York 11797

**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 /cmg*

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

Upper East Side Rehabilitation and Nursing Center,

Respondent,

to discharge Appellant from a residential health care facility.

**COPY**

**DECISION  
AFTER  
HEARING**

Before: Rayanne L. Babich  
Administrative Law Judge

Dates: October 27, 2022

Held at: New York State Department of Health  
By Webex videoconference

Parties: ██████████, Appellant  
c/o Upper East Side Rehabilitation and Nursing Center  
211 East 79<sup>th</sup> Street  
New York, New York 10021  
Pro se

Christina Catalano, Regional Director of Social Work  
Upper East Side Rehabilitation and Nursing Center  
211 East 79<sup>th</sup> Street  
New York, New York 10021

By: Katie Barbieri, Esq.  
Cassena Care  
225 Crossways Park Drive  
Woodbury, New York 11797

JURISDICTION

By notice dated [REDACTED] 2022, Upper East Side Rehabilitation and Nursing Center (Facility), determined to discharge [REDACTED] (Appellant) from care in its Facility. Title 10 of the New York Code Rules and Regulations (NYCRR) Part 415.3(i)(1)(iii)(a). The Appellant appealed the proposed discharge. 10 NYCRR 415.3(i)(2).

RECORD

Facility Exhibits: 1 – Social work progress notes, [REDACTED], 2021 to [REDACTED] 2022  
2 – Transfer/Discharge Notice, [REDACTED], 2022  
3 – Physical therapy discharge summary, [REDACTED], 2022  
4 – Occupational therapy discharge summary, [REDACTED], 2022  
5 – Physician progress note, [REDACTED], 2022  
Appellant Exhibits: None  
Facility Witnesses: Neri Takubov, M.D., Facility physician  
Sushant Abrol, Director of Rehabilitation  
Christina Catalano, Regional Social Worker  
Appellant Witness: [REDACTED]

The hearing was digitally recorded. [R. 1:10:05.]

FINDINGS OF FACT

1. Upper East Side Rehabilitation and Nursing Center is a residential health care facility (nursing home). [Ex 2.]
2. The Appellant, age [REDACTED] was admitted to the Facility in [REDACTED] 2021 for [REDACTED] treatment for a [REDACTED], as well as physical and occupational therapies to improve [REDACTED] and mobility. [Ex 3, 4; R. 40:29.]
3. The Appellant completed his [REDACTED] treatment, and the [REDACTED] has resolved. The Appellant reached his treatment goals and was discharged from occupational therapy on [REDACTED], 2022 and from physical therapy on [REDACTED], 2022. The Appellant is currently in a maintenance program with physical therapy at the Facility in preparation for discharge. [Ex 3, 4; R. 29:03, 32:38, 34:10.]

4. The Appellant's physician at the Facility, Neri Takubov, M.D., documented in the medical record on [REDACTED], 2022 that the Appellant no longer requires the services provided by the Facility, and has been medically cleared for discharge to his home. [Ex 5.]
5. The Facility has determined the Appellant's health has improved so that he no longer needs the services provided by the Facility. The discharge location is to the Appellant's home in the community. [Ex 2.]

ISSUE

Has the Facility met its burden of proving that the Appellant's health has improved sufficiently so he no longer needs nursing home care and that its discharge plan is appropriate?

APPLICABLE LAW

1. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(i), which provides, in pertinent part:
  - (1) With regard to the transfer or discharge of residents, the facility shall:
    - (i) permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless such transfer or discharge is made in recognition of the resident's rights to receive considerate and respectful care, to receive necessary care and services, and to participate in the development of the comprehensive care plan and in recognition of the rights of other residents in the facility. (a) The resident may be transferred only when the interdisciplinary care team, in consultation with the resident or the resident's designated representative, determines that:
      - (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; *See also* PHL 2803-z.
2. In planning for discharge, a facility must:

(vi) 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, and provide a discharge summary pursuant to section 415.11(d) of this Title; and (vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.  
10 NYCRR 415.3(i)(1)(vi)-(vii).

3. The Facility has the burden of proving that the “discharge or transfer is/was necessary and the discharge plan appropriate.” 10 NYCRR 415.3(i)(2)(iii)(b).

#### DISCUSSION

The Facility has proven that the discharge is necessary because the Appellant’s health has improved sufficiently so he no longer needs nursing home care and that the plan to discharge the Appellant to his home is appropriate. 10 NYCRR 415.3(i).

#### Grounds for Transfer

After the Appellant successfully completed physical and occupational therapies and [REDACTED] weeks of [REDACTED] treatment, the Facility determined that discharge is necessary because he no longer requires the services provided by the Facility. [Ex 2, 5.] The Appellant argued that he needs “a little bit more time to get [his] stuff together” and continue with his maintenance program with physical therapy at the Facility before he returns home. [R. 56:31.] The Appellant testified that his balance has not improved to its maximum potential, and he would like to continue working toward that goal in therapy. [R. 58:06.]

The Appellant’s treating physician at the Facility, Neri Takubov, M.D., testified that the Appellant no longer requires the services provided by the Facility because he has completed the [REDACTED] treatments and rehabilitation services, is independent in all activities of daily living, and can receive follow up for routine medical care and physical therapy in the community. [R. 24:09.]

The Director of Rehabilitation Services at the Facility, Sushant Abrol, testified that the Appellant met his treatment goals because he has reached a high level of functioning, can ambulate independently with a rollator, and navigate stairs safely. [R. 29:17.] Christina Catalano, Regional Social Worker, explained that a referral can be made for the Appellant to continue with physical therapy services in his home or on an outpatient basis in the community. [R. 48:37.] The Appellant's request for additional time at the Facility is not an appropriate reason to continue his admission. Grounds for discharge have been met because the Appellant no longer requires the type of services provided by the Facility. 10 NYCRR 415.3(i)(1)(i)(a)(2).

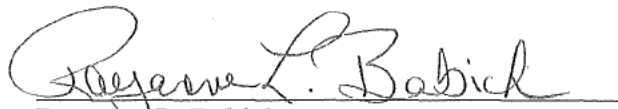
#### Discharge Plan

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 Appellant did not object to the discharge location and testified that his plan for discharge has always been to return home. [R. 41:16, 53:13.] The interdisciplinary team at the Facility and the Appellant agreed that his needs can be met at home because it will provide him with access to his previously established medical providers and a referral to home care services to include physical therapy. [R. 25:14, 37:20, 45:09, 1:02:50, 1:05:20.] The Facility's discharge plan is appropriate. 10 NYCRR 415.3(i)(2)(iii)(b).


#### ORDER

The Facility is authorized to discharge the Appellant to the location identified in the Notice of Discharge dated [REDACTED], 2022 and in accordance with its discharge plan.

Dated: November 4, 2022  
Albany, New York

  
Rayanne L. Babich  
Administrative Law Judge

TO:

  
c/o Upper East Side Rehabilitation and Nursing Center  
211 East 79<sup>th</sup> Street  
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