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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 15, 2022

### CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
c/o The Eleanor Nursing Care Center  
419 North Quaker Lane  
Hyde Park, New York 12538

Frank Izzo, Esq.  
Rivkin Radler  
2649 South Road, Suite 100  
Poughkeepsie, New York 12601

Valerie Tamburrino, Director of Nursing  
The Eleanor Nursing Care Center  
419 North Quaker Lane  
Hyde Park, New York 12538

**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*

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

**The Eleanor Nursing Care Center,**

Respondent,

to discharge Appellant from a residential health care facility.

**COPY**

**DECISION  
AFTER  
HEARING**

Before: Rayanne L. Babich  
Administrative Law Judge

Date: November 10, 2022

Held at: Department of Health  
Webex videoconference

Parties: ██████████ ██████████  
The Eleanor Nursing Care Center  
419 North Quaker Lane  
Hyde Park, New York 12538

The Eleanor Nursing Care Center  
419 North Quaker Lane  
Hyde Park, New York 12538

By: Valerie Tamburrino, Director of Nursing

Participants: Vassar Brothers Medical Center  
45 Reade Place  
Poughkeepsie, New York 12601  
By: Frank Izzo, Esq.  
Rivkin Radler  
2649 South Road, Suite 100  
Poughkeepsie, New York 12601

**JURISDICTION**

The Eleanor Nursing Care Center (Facility), refused to readmit [REDACTED] [REDACTED] (Appellant) to its Facility following his hospitalization, thereby discharging the Appellant. 10 NYCRR 415.3(i). The Appellant appealed the proposed discharge pursuant to 10 NYCRR 415.3(i)(2).

**RECORD**

ALJ Exhibits: I – Notice of Hearing  
II – Facility face sheet

Facility Exhibits: 1 – Written correspondence to Appellant, [REDACTED], 2022  
2 – Nursing summary, [REDACTED] 2022  
3 – Email, [REDACTED], 2022  
4 – Facility Accident & Incident Report, [REDACTED], 2022; Investigative Form, [REDACTED], 2022  
5 – Nursing progress notes, [REDACTED] to [REDACTED] 2022

Appellant Exhibits: A – Hospital medical records

Facility Witness: Danny Speiser, Facility Administrator  
Valerie Tamburrino, Director of Nursing

Appellant Witness: [REDACTED] [REDACTED]  
Janice Yanonne, Director of Case Management, Vassar Brothers Medical Center

The hearing was digitally recorded. [R. 1:12:44.]

**FINDINGS OF FACT**

1. The Eleanor Nursing Care Center is a nursing home. [Ex I.]
2. The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED], 2021 for [REDACTED] [REDACTED] treatment in preparation for [REDACTED]. [Ex I; R. 52:13.]

3. The Appellant's current medical diagnoses include [REDACTED]. [Ex II; R. 52:45.]
4. The Appellant is dependent on a wheelchair for ambulation due to [REDACTED]. He requires the assistance of another person with bathing, dressing, toileting, transferring, and setting up for meals. [Ex A; R. 54:03.]
5. On [REDACTED] 2022, the Appellant was transferred to Vassar Brothers Medical Center (Hospital) after a fall from his bed at the Facility. He was admitted to the Hospital and evaluated for [REDACTED] and treated for [REDACTED] and [REDACTED]. The Hospital cleared the Appellant for discharge back to the nursing home on [REDACTED], 2022. The Facility refused to readmit him. [Ex A; R. 1:02:22.]
6. The Facility did not provide the Appellant with the required notice of discharge. A letter dated [REDACTED], 2022 was issued by the Facility to the Appellant stating the Facility's decision to not allow the Appellant to return. [Ex 1.]

#### ISSUES

Has the Facility met its burden of proving that the discharge was necessary and that the discharge plan is appropriate?

#### APPLICABLE LAW

1. Permissible grounds for the involuntary discharge of a nursing home resident include:
  - (1) the transfer or 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;
- 10 NYCRR 415.3(i)(1)(i)(a).

2. Before discharging a resident, a facility must

- (a) notify the resident and designated representative, if any, and, if known, family member of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner the resident and/or family member understand;
  - (b) record the reasons in the resident's clinical record;
  - (c) include in the notice the items described at 10 NYCRR 415.3(i)(1)(v).
- 10 NYCRR 415.3(i)(1)(iii).

3. Notice from the Facility of its intention to discharge a resident must include:

- (a) the reason for transfer or discharge;
- (b) the specific regulations that support, or the change in Federal or State law that requires, the action;
- (c) the effective date of transfer or discharge;
- (d) the location to which the resident will be transferred or discharged;
- (e) a statement that the resident has the right to appeal the action to the State Department of Health, which includes:
  - (1) an explanation of the individual's right to request an evidentiary hearing appealing the decision;
  - (2) the method by which an appeal may be obtained;
  - (3) in cases of an action based on a change in law, an explanation of the circumstances under which an appeal will be granted;
  - (4) an explanation that the resident may remain in the facility (except in cases of imminent danger) pending the appeal decision if the request for an appeal is made within 15 days of the date the resident received the notice of transfer/discharge;
  - (5) in cases of residents discharged/transferred due to imminent danger, a statement that the resident may return to the first available bed if he or she prevails at the hearing on appeal; and
  - (6) a statement that the resident may represent him or herself or use legal counsel, a relative, a friend, or other spokesman;
- (f) the name, address and telephone number of the State long term care ombudsman;
- (g) for nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act;

(h) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act; 10 NYCRR 415.3(i)(1)(v).

4. In preparation for discharge, a facility must develop a plan that “addresses the medical needs of the resident and how these needs will be met after discharge.” 10 NYCRR 415.3(i)(1)(vi).
5. A hospital is not an appropriate discharge location. DOH *DAL NH-19-07: Notice of Transfer or Discharge and Permitting Residents to Return* (August 20, 2019, Redistributed October 11, 2022).
6. 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).
7. Federal regulations at 42 CFR 483.15 contain substantially identical provisions to the forgoing provisions of 10 NYCRR 415.3(i).

#### DISCUSSION

In addition to failing to comply with notice requirements for an involuntary discharge, the Facility has failed to meet its burden of proving either that discharge is necessary or that its discharge plan is appropriate.

The Appellant has been a resident at the Facility since [REDACTED] 2021. [Ex I.] He was admitted to the Hospital for treatment on [REDACTED] 2022 after sustaining a fall from his bed at the Facility. [Ex A.] He was cleared for discharge from the Hospital on [REDACTED], 2022, and the Hospital determined that return to the nursing home is the proper level of care. [Ex A; R. 1:02:22.]

The Facility refused to readmit the Appellant when contacted by hospital case management staff.

[Ex A; R. 1:03:37.]

The Facility did not issue a notice of discharge. [R. 34:59.] The Facility's [REDACTED], 2022 letter to the Appellant indicating a decision not to allow the Appellant to return is not sufficient because it does not contain the regulatory requirements to constitute proper notice. 10 NYCRR 415.3(i)(1)(iii) and (v). [Ex 1.] While at this hearing the Facility claimed that the Appellant could not be accepted back because it can no longer meet his needs and because he is a danger to himself and to other residents, the Facility never issued a notice alleging these reasons as grounds for discharge as required by Department regulations. [Ex 1; R. 33:15.] 10 NYCRR 415.3(i)(1)(i)(a). The Facility's excuse for rejecting the Appellant's return because he now appears to have an "[REDACTED]," despite residing at the Facility for approximately one year and being prescribed [REDACTED] has no merit. [Ex 3; R. 30:30.] Additionally, the Facility's reasoning that the Appellant's ability to manage his affairs leaves him more likely to bring [REDACTED] in the Facility is not persuasive. [R. 30:43.]

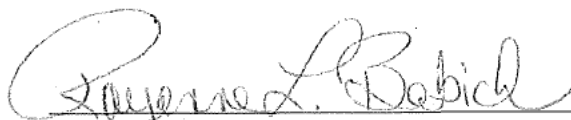
The Facility has also failed develop a discharge plan that is appropriate for the Appellant because a transfer to a hospital is not an appropriate discharge location for a resident who still requires nursing home care but not hospitalization. 10 NYCRR 415.3(i)(2)(iii)(b); DOH *DAL NH-19-07: Notice of Transfer or Discharge and Permitting Residents to Return* (August 20, 2019, Redistributed October 11, 2022). The Facility has not identified a discharge location other than its assertion that the Appellant should not return to the Facility. [T. 34:33.] Due to lack of notice alleging grounds and an appropriate discharge location pursuant to Department regulations, the Facility is required to readmit the Appellant.



ORDER

1. The Appellant's appeal is **GRANTED**.
2. The Facility is ordered to accept the Appellant to the next available semi-private bed prior to admitting any other person to the Facility, pursuant to 10 NYCRR 415.3(i)(2)(i)(d).
3. This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Laws and Rules.

Dated: November 15, 2022  
Albany, New York



Rayanne L. Babich  
Administrative Law Judge

TO:

██████ ██████  
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