

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan  
SAPA File  
BOA by scan



**Department  
of Health**

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Acting Commissioner

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

March 17, 2023

**CERTIFIED MAIL/RETURN RECEIPT**

██████████ ██████████  
c/o Caring Family Nursing and Rehabilitation  
22-41 New Haven Avenue  
Far Rockaway, New York 11691

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

Alicia Lemon, DSW  
Caring Family Nursing and Rehabilitation  
22-41 New Haven 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: 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

CARING FAMILY NURSING  
AND REHABILITATION CENTER

Respondent,

to discharge him from a residential health  
care facility.

COPY

DECISION

Hearing Before:

Matthew C. Hall  
Administrative Law Judge

Held at:

Via WebEx

Hearing Date:

March 8, 2023

Parties:

Caring Family Nursing  
and Rehabilitation Center  
22-41 New Haven Avenue  
Far Rockaway, NY 11691  
By: Barbara Stegun Phair, Esq.

██████████ ██████████  
By: *Pro Se*

JURISDICTION

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

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing and attached Facility Discharge Notice

Facility Exhibits: 1 - Letter from Dr. Uthman  
2 - Progress Notes  
3 - Facility Discharge Summary  
4 - Rehabilitation Screening Form  
5 - Emails to and from DHS shelter  
6 - Progress Notes

Facility Witnesses: Dr. Adeola Uthman - Attending Physician  
Elaine Villasanta - Director of Nursing  
Nimesha Manwani - Director of Rehabilitation  
Alisha Lemon - Director of Social Work

Appellant's Witness: Appellant testified on his own behalf

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 refer to testimony (T.) of witnesses and exhibits (Ex.) found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant is a [REDACTED]-year-old man who was admitted to the Facility on [REDACTED], 2021. (Ex 1.)

2. He was originally admitted for short term care for [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].

The Appellant is alert and oriented with a BIMS score of [REDACTED]/15. (Ex. 1,2,3.)

3. By notice dated [REDACTED] 2023, the Facility determined to discharge the Appellant on [REDACTED] [REDACTED], 2023, because his "health improve(d) sufficiently so that the Resident no longer needs the services of the Facility." (ALJ. I.)

4. As of the date of this hearing, the Appellant's conditions had improved significantly. He was able to ambulate independently with the use of a wheelchair and could also walk for limited

distances with the use of a rolling walker. He was completely independent in all Activities of Daily Living (ADLs) such as toileting, bathing, dressing, grooming and hygiene. He manages all his medical and personal needs and is medically stable. (Ex. 1; T. Uthman, Villasanta, Manwani.)

5. While the Appellant has been cleared by the Facility to return to the community, the Appellant could benefit from the assistance of an assisted living facility (ALF). The Facility has found three separate ALFs that are willing to accept the Appellant as a resident. The Appellant, however, has refused to cooperate with the Facility's attempts to place him in an ALF. (ALJ I., T. Manwani, Villasanta, Lemon.)

6. Since the Appellant has refused to cooperate with efforts to place him in an ALF, the Facility has determined to discharge the Appellant to the [REDACTED] Shelter, located at [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (ALJ. I.)

7. It is the professional opinion of the Appellant's caregivers at the Facility, including the Facility's Attending Physician, Director of Social Work, and Director of Rehabilitation, that discharge to the community, including to an adult care center, is appropriate. (Ex. 1, 2; T. Uthman, Manwani, Villasanta, Lemon.)

8. The Appellant remains at the Facility pending the outcome of this appeal.

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. Public Health Law §§ 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 Resident's discharge is permissible pursuant to 10 NYCRR § 415(i)(1)(i)(a)(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.

Under the hearing procedures at Title 10 NYCRR §415.3(i)(2)(iii), the Facility bears the burden to prove a discharge necessary and appropriate. Under the New York State Administrative Procedures Act (SAPA) § 306(1), a decision in an administrative proceeding must be in accordance with substantial

evidence. 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.

#### DISCUSSION

The Appellant was admitted to the Facility on [REDACTED], 2021, for short term care for [REDACTED]. (Ex. 3.)

At the time of his admission to the Facility, the Appellant required assistance with all ADLs, including ambulating, transferring, and showering. By [REDACTED], 2023, however, the Appellant's abilities significantly improved, and he was and remains independent with all ADLs. He is able to walk limited distances with the assistance of a rolling walker. He can ambulate farther with the use of a wheelchair. He has no further need for rehabilitation. The Appellant has been managing all his medical appointments and other personal matters on his own. (Ex. 2.) It is the opinion of the professionals from all Facility disciplines, including Dr. Uthman, the Appellant's attending physician, that



the Appellant may be safely discharged from the Facility to the [REDACTED] Shelter. (Ex. 1,2; T. Uthman, Villasanta, Manwani, Lemon.)

The Appellant no longer needs skilled nursing care and refuses care when it is offered to him. Accordingly, the Facility has proven that its determination to discharge the Appellant is correct.

As discussed above, while the Appellant can be safely placed in the community, he could benefit from the assistance of an ALF. The Appellant, however, has refused to cooperate with the Facility's efforts to find a placement for him in such a facility. This has left the Facility with only the option of discharging the Appellant to a [REDACTED] shelter. The Appellant and the Facility are encouraged to continue to work together to find the Appellant a placement in an ALF if the Appellant becomes willing to cooperate.

Accordingly, the Facility has proven that its determination to discharge the Appellant to the [REDACTED] Shelter is appropriate.


DECISION

Caring Family Nursing and Rehabilitation Center has established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate.

Caring Family Nursing and Rehabilitation Center is authorized to discharge the Appellant in accordance with the [REDACTED] 2023, Discharge Notice.

This Decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

DATED: Albany, New York  
March 17, 2023

  
Matthew C. Hall  
Administrative Law Judge

To: [REDACTED]  
c/o Caring Family Nursing  
and Rehabilitation  
22-41 New Haven Avenue  
Far Rockaway, NY 11691

Alicia Lemon, DSW  
Caring Family Nursing  
and Rehabilitation  
22-41 New Haven Avenue  
Far Rockaway, NY 11691

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