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# Department of Health

**KATHY HOCHUL**  
Governor

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

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

June 9, 2023

## CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████  
Northern Manhattan Rehabilitation  
& Nursing Center  
116 East 125<sup>th</sup> Street  
New York, New York 10035

Steven Rossi  
Northern Manhattan Rehabilitation  
& Nursing Center  
116 East 125<sup>th</sup> Street  
New York, New York 10035

**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

NORTHERN MANHATTAN  
REHABILITATION AND NURSING  
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:

May 31, 2023

Parties:

Northern Manhattan  
Rehabilitation and Nursing Center  
116 East 125<sup>th</sup> Street  
New York, NY 10035  
By: Steven Rossi

██████████ ██████████

By: Pro Se

JURISDICTION

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

Facility Exhibits: 1 - Summary Report  
2 - Progress Notes  
3 - Resident Face Sheet  
4 - Brief Interview for Mental Status (BIMS)

Facility Witnesses: Steven Rossi - Administrator  
Sophie David - Assistant Director of Nursing  
Maxine McCarthy - Director of Social Work

Appellant's Exhibits: None

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] [REDACTED], 2022. (Ex. 1.)

2. He was originally admitted for care with diagnoses including [REDACTED] [REDACTED], [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Ex. 1.)

3. The resident is alert and oriented with a BIMS score of [REDACTED]/15. (Ex. 4.)

4. Upon entry to the facility, the Appellant required rehabilitation and assistance with all Activities of Daily Living (ADLs). As of the date of this hearing, the Appellant has made significant improvement and is fully proficient in all of his ADLS. He is fully independent and regularly refuses assistance from the

Facility's staff. He leaves the Facility alone on a daily basis. He manages all his medical and personal needs and is medically stable. (Ex. 4; T. Rossi, David, McCarthy.)

5. The resident is [REDACTED] and [REDACTED] on a regular basis, both [REDACTED] [REDACTED]. On numerous occasions, he has [REDACTED] residents and staff at the Facility. He has a habit of [REDACTED] in his and other rooms while other residents are being examined and cared for by Facility staff. (Ex. 2; T. Rossi, David, McCarthy.)

6. Pursuant to the [REDACTED] [REDACTED], 2023, discharge notice, the Facility determined to discharge the Appellant to his apartment, located at [REDACTED] [REDACTED] [REDACTED]. (ALJ I., Ex. 3.)

7. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending Physician, Assistant Director of Nursing, Director of Social Work, and Administrator, that discharge to the community, including to his apartment, is appropriate. (T. Rossi, David, McCarthy.)

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(h)(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.

The Facility also alleged that the Resident's discharge is permissible pursuant to 10 NYCRR § 415(h)(1)(i)(a)(3):

The safety (and health) of individuals in the Facility (are) endangered.

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] 2022, for care following discharge from [REDACTED] Hospital [REDACTED] with diagnoses of [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Ex. 1.)

At the time of his admission to the Facility, the Appellant required assistance with all ADLs, including ambulating, transferring, and showering. By [REDACTED] [REDACTED] 2023, however, the Appellant's abilities significantly improved, and he was independent with all ADLs. He is able to walk extended distances by himself without the aid of assistive devices. He has no further need for rehabilitation. The Appellant has consistently refused care. He has stated that he, "no longer needs services." (T.



David.) The Appellant has also 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 the Appellant's attending physician, that the Appellant may be safely discharged from the Facility to his own home. (Ex. 4; T. Rossi, David, McCarthy.)

The Appellant has also placed the safety and health of the other residents and staff at the Facility at risk. During medical examinations of other residents, the Appellant has routinely [REDACTED] in that room. He has also been [REDACTED] and has [REDACTED] the staff and residents of the Facility. During the hearing, the Appellant was [REDACTED] and [REDACTED]. He was unresponsive to questioning and ranted that he did not want to be there. He, in fact, walked out of the hearing without providing testimony or evidence. (Hearing recording 4:15 to 6:40.)

The Appellant no longer needs skilled nursing care and refuses care when it is offered to him. He is also a danger to the other residents of the Facility, as well as the Facility's staff. Accordingly, the Facility has proven that its determination to discharge the Appellant is correct.

Prior to his stay at the Facility, the Appellant resided at his own apartment in the community. He has complained to Facility staff members, however, that the reason he cannot be discharged is that his home is being renovated. He stated that, "his home was being worked on," and "it's cheaper to stay here than go to a hotel while they work on his home." (T. McCarthy.)

Accordingly, the Facility has proven that its determination to discharge the Appellant to his own residence is appropriate.

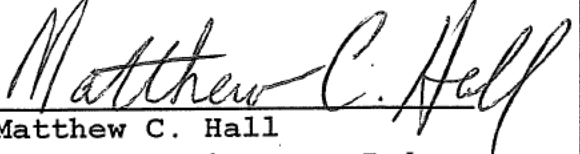
#### DECISION


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

Northern Manhattan Rehabilitation and Nursing Center is authorized to discharge the Appellant in accordance with the [REDACTED] [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  
June 9, 2023

  
Matthew C. Hall  
Administrative Law Judge

To:   
c/o Northern Manhattan  
Rehabilitation and Nursing Center  
116 East 125<sup>th</sup> Street  
New York, NY 10035

Mr. Steven Rossi  
Northern Manhattan  
Rehabilitation and Nursing Center  
116 East 125<sup>th</sup> Street  
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