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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

May 12, 2023

## CERTIFIED MAIL/RETURN RECEIPT

██████████ Appellant  
c/o The New Jewish Home, Manhattan  
120 West 106<sup>th</sup> Street  
New York, NY 10025

Meg Bondy, Director of Social Work  
The New Jewish Home, Manhattan  
120 West 106<sup>th</sup> Street  
New York, NY 10025

**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**

In the Matter of an Appeal, pursuant to 10 NYCRR 415.3, by

██████████ ██████████

Appellant,

from a determination by

**The New Jewish Home, Manhattan,**

Respondent,

to discharge Appellant from a residential health care facility.

**DECISION**

COPY

Before: Rayanne L. Babich  
Administrative Law Judge (ALJ)

Date: May 10, 2023

Held at: New York State Department of Health  
Webex videoconference

Parties: ██████████ ██████████  
c/o The New Jewish Home, Manhattan  
120 West 106<sup>th</sup> Street  
New York, NY 10025  
By: Pro se

The New Jewish Home, Manhattan  
120 West 106<sup>th</sup> Street  
New York, NY 10025  
By: Meg Bondy, Director of Social Work

**JURISDICTION**

By notice dated March 20, 2023, The New Jewish Home, Manhattan, a residential health care facility (Facility), determined to discharge ██████████ ██████████ (Appellant), from care in its Facility. The Appellant appealed the proposed discharge.

RECORD

ALJ Exhibits [Ex]: I – Notice of Hearing, [REDACTED] 2023  
II – Notice of Discharge, [REDACTED] 2023

Facility Exhibit: None

Appellant Exhibit: None

Facility Witnesses: Stephanie Le, Facility Physician  
Elizabeth DeRosa, Subacute Unit Social Worker  
Jamie Solis, Clinical Manager for Rehabilitation

Appellant Witness: [REDACTED] Appellant

The hearing was digitally recorded. [R. 1:05:22.]

SUMMARY OF FACTS

1. The Appellant was admitted to the Facility on [REDACTED], 2021 for restorative rehabilitation following a hospitalization after suffering a [REDACTED]. [R. 7:29.]
2. By notice dated [REDACTED] 2023, the Facility advised the Appellant of its determination to discharge the Appellant because her “health has improved sufficiently so that [she] no longer needs the services provided by the facility.” [Ex II.]
3. The Appellant received six courses each of occupational and physical therapy. She was last discharged from occupational therapy on [REDACTED] 2023 and is currently receiving physical therapy. The Appellant ambulates with the use of a rolling walker or manual wheelchair. [R. 22:43, 28:14.]
4. The Facility has proposed to discharge the Appellant to her apartment in [REDACTED], New York. [Ex II; R. 33:58.]
5. On [REDACTED] 2023, Stephanie Le, M.D., Facility physician, sent the Appellant to the hospital for further evaluation based on results from laboratory tests conducted at the Facility.

The Appellant was diagnosed with [REDACTED]. She was released from the hospital on [REDACTED] 2023 and returned to the Facility. [R. 4:48; 49:36.]

6. The Facility's physician has determined the Appellant is not medically cleared for discharge from the Facility due to the diagnosis of [REDACTED] and necessary follow up medical care. [R. 4:37, 6:35.]

#### ISSUES

Has the Facility met its burden of proving that the discharge is necessary and that the 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.
2. Prior to discharging a resident, the Facility must ensure complete documentation in the resident's clinical record. The documentation shall be made by the resident's physician and, as appropriate, interdisciplinary care team when transfer or discharge is necessary. 10 NYCRR 415.3(i)(1)(ii).

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 Appellant was admitted to the Facility for restorative therapy following a hospitalization that resulted in her inability to ambulate independently. The Facility argued that the Appellant was ready for discharge because her health has improved sufficiently so that she no longer requires the services it provided by the Facility, and she reached her maximum potential for rehabilitation. The Appellant opposed the discharge because she has not reached her goal to ambulate without assistance.

The Appellant’s treating physician at the Facility, Stephanie Le, M.D., testified that she is “not confident” to say the Appellant is medically stable for discharge because she has an active medical issue with [REDACTED] that requires follow up testing. [R. 4:18, 6:35.] She explained that the Appellant was evaluated at the hospital beginning [REDACTED] 2023, and returned to the Facility two days later, but requires follow up laboratory tests to ensure the risk for [REDACTED] continues to drop. [R. 9:53.] Dr. Le also testified that although her medical opinion may change depending on the results of these future laboratory tests, she cannot opine that the Appellant should be discharged from the Facility. [R. 6:42.] Dr. Le has also not documented in the Appellant’s medical record the reasons for discharge or that the discharge is necessary. [R. 7:02.]

The Facility has failed to establish grounds for discharge. 10 NYCRR 415.3(i)(1)(i)(a). Although it has alleged that the Appellant no longer requires the services provided by the Facility, the evidence does not support this. The Facility’s own physician, Dr. Le, has been treating the

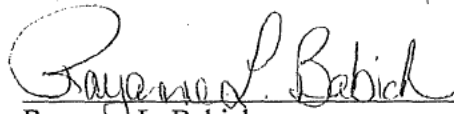
Appellant and determined that she continues to require the on-going medical services provided by the Facility. A decision on whether the discharge plan is appropriate is not needed.

**ORDER**

The New Jewish Home, Manhattan has not met its burden to prove that its determination to discharge the Appellant is necessary.

1. The Facility is not authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED] 2023.
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: May 12, 2023  
Albany, New York



Rayanne L. Babich  
Administrative Law Judge

TO:

██████████ Appellant  
c/o The New Jewish Home, Manhattan  
120 West 106<sup>th</sup> Street  
New York, NY 10025

Meg Bondy, Director of Social Work  
The New Jewish Home, Manhattan  
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