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# Department of Health

**KATHY HOCHUL**  
Governor

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


**JOHANNE E. MORNE, M.S.**  
Acting Executive Deputy Commissioner

September 25, 2023

**CERTIFIED MAIL/RETURN RECEIPT**

Barbara Phair, Esq.  
Abrams Fensterman  
3 Dakota Drive  
Lake Success, New York 11042



  
c/o St. Johnland Nursing Center  
395 Sunken Meadow Road  
Kings Park, New York 11754

**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

**COPY**

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

[REDACTED]

Appellant,

from a determination by

**St. Johnland Nursing Center Inc.,**

Respondent,

to discharge him from a residential  
health care facility.

**DECISION  
AFTER  
HEARING**

Docket # 6128

Hearing before: Kathleen Dix  
Administrative Law Judge  
September 22, 2023  
By WebEx Videoconference

Parties:  
By: St. Johnland Nursing Center, Inc.  
Barbara Stegun Phair, Esq.  
3 Dakota Drive  
Lake Success, NY 11042

By: [REDACTED]

## JURISDICTION

By notice dated [REDACTED] 2023, St. Johnland Nursing Center, Inc., (Facility), a residential health care facility subject to Article 28 of the Public Health Law (PHL), determined to discharge / transfer [REDACTED] [REDACTED] (Appellant) from care and treatment in its Facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes, Rules, and Regulations (NYCRR) Section 415.3(i).

The hearing was held on September 22, 2023, in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); and the New York State Administrative Procedure Act (SAPA); via Webex videoconference. Evidence was received and witnesses were examined. A digital recording of the hearing was made (4h. 22m.).

## HEARING RECORD

### ALJ Exhibits:

- I. Adjournment Request
- II. Adjournment Denial
- III. Notice of Hearing and Notice of Discharge or Transfer

### Facility's Exhibits:

1. Physician Progress note and Letter (2 pages).
2. Resident Nursing Instructions – ADL's (5 pages).
3. Nursing Progress Notes (10 pages).
4. Discharge Planning Instructions (7 pages).
5. Neuropsychological Assessment (1 page).

### Appellant's Exhibit:

None.

Facility's Witnesses:

1. Yelena Faynzilbert, M.D.
2. Michelle Romaine, R.N.
3. Chase Rowley, Director of Rehabilitation
4. John Mackay, Director of Social Work

Appellant's Witnesses:

1. [REDACTED]
2. [REDACTED]

**ISSUES**

Has the Facility established that its determination to discharge the Appellant is correct and that its discharge plan is appropriate?

**FINDINGS OF FACTS**

1. Respondent, St. Johnland Nursing Center, Inc., is a residential health care facility, specifically a nursing home within the meaning of PHL § 2801.2 and 10 NYCRR 415.2(k), located in New Hartford, New York.

2. The Appellant is a [REDACTED]-year-old male who was involved in a [REDACTED] accident, admitted to the Facility on [REDACTED] 2023, from [REDACTED] Hospital with diagnoses including [REDACTED]

[REDACTED]. (T. Faynzilbert 39:19- 42:05.)

3. By notice dated [REDACTED] 2023, the Respondent advised the Appellant of its determination to discharge him on [REDACTED] 2023, on the grounds that his needs cannot be met after reasonable attempts at accommodation in the Facility in that the Appellant refuses to participate in discharge planning and is [REDACTED] towards staff. The Respondent was also advised that he has reached his potential and no longer needs the services provided by the Facility in that he is independent in activities of daily

living (ADL's), transfers, and ambulation, and he can participate in outpatient therapy in the community. (ALJ Exhibit III).

4. The discharge notice advised the Appellant he would be discharged to the Department of Social Services (DSS), [REDACTED] (ALJ Exhibit III).

5. The Appellant's physician at the Facility has opined that he is medically optimized for a safe discharge home, that he does not require nursing home or rehabilitative facility care, and that he can return to the community and receive outpatient services. (Exhibit 1, T. Faynzilbert 41:52-42:00.)

#### APPLICABLE LAW

A residential health care facility (RHCF), or nursing home, is a residential facility providing nursing care to sick, invalid, infirm, disabled or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital. PHL § 2801; 10 NYCRR 415.2(k). Transfer and discharge rights of nursing home residents have been codified in PHL § 2803-z and set forth at 10 NYCRR 415.3(i) which provides, in pertinent part, that the facility shall:

(1) (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:

(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.

...

(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.

The Respondent has the burden of proving that the discharge or transfer is necessary and that the discharge plan is appropriate. 18 NYCRR 415.3(i)(2)(iii)(b).

### DISCUSSION

The Facility asserts that the Appellant has reached his potential and no longer needs the services provided by the Facility and that the Appellant refuses to participate in his discharge planning. (ALJ Exhibit III.) The Appellant's primary contention is that he cannot walk (T. Appellant 3:00) and needs a " [REDACTED] ) machine which is heavy and he would need assistance setting up the machine. (T. Appellant 3:02-3:06). The Appellant is also concerned with his vision. (T. Appellant 3:06.) The Appellant shared other generalized concerns with his treatment at the Facility.

After a lengthy hearing, where testimony was taken and evidence was entered into the record, the parties reached an agreement regarding the Appellant's discharge and the discharge plan. The parties agreed as follows:

1. The Appellant agrees to be discharged. (T. Appellant 3:52.)
2. The Appellant agrees to cooperate with the discharge planning and the discharge. (T. Appellant 3:57.)
3. The Appellant agrees to follow the rules of the Facility, e.g., no vaping. (T. Appellant 4:01.)
4. The Facility agrees that it will assist the Appellant with identifying and securing an alternative discharge location. (T. Mackay 3:47.)
5. The Facility agrees that upon discharge, it will arrange for the [REDACTED] machine to be set up for the Appellant. (T. Mackay 3:47.)
6. The Facility agrees that upon discharge, it will arrange, on an outpatient basis, home care, physical therapy, an aide, transportation services, and social

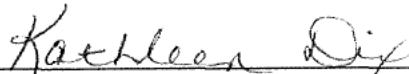
services to coordinate medical appointments, and the Appellant will have his prescriptions provided to him. (T. 3:53).

**DECISION**

1. St. Johnland Nursing Center, Inc., is authorized to discharge the Appellant in accordance with the above settlement terms.
2. Should the Appellant fail to cooperate with the Facility in securing an alternative discharge location, the Appellant will be discharged to DSS.

It is SO ORDERED.

Dated: Menands, New York  
September 25, 2023

  
\_\_\_\_\_  
Kathleen Dix  
Administrative Law Judge

To:



St. Johnland Nursing Center, Inc.  
c/o Barbara Stegun Phair, Esq.  
3 Dakota Drive  
Lake Success, NY 11042