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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

October 27, 2023

**CERTIFIED MAIL/RETURN RECEIPT**

██████████ ██████████  
c/o Luxor Nursing & Rehab at Mills Pond  
273 Moriches Road  
Saint James, New York 11780

Lucille Preziotti, DSW  
Luxor Nursing & Rehab at Mills Pond  
273 Moriches Road  
Saint James, New York 11780

**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

-----X  
In the Matter of an Appeal, pursuant to :  
10 NYCRR § 415.3, by :

██████████ ██████████

Appellant, :

from a determination by :

LUXOR NURSING & REHABILITATION :  
At MILLS POND :

Respondent, :

to discharge him from a residential health :  
care facility. :

COPY

DECISION

-----X  
Hearing Before:

Matthew C. Hall  
Administrative Law Judge

Held at:

Via WebEx

Hearing Date:

October 25, 2023

Parties:

Luxor Nursing and  
Rehabilitation at Mills Pond  
273 Moriches Road  
Saint James, NY 11780  
By: Lucille Preziotti, DSW

██████████ ██████████

By: *Pro Se*

JURISDICTION

By notice dated [REDACTED] [REDACTED] 2023, the Luxor Nursing and Rehabilitation at Mills Pond (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  
II - Discharge Notice

Facility Exhibits: 1 - Summary Account by Lucille Preziotti  
2 - Brief Interview for Mental Status (BIMS)

Facility Witnesses: Lucille Preziotti - Director of Social Work  
Eli Weiss - Administrator  
Catherine Itzkowitz - Director of Nursing  
Rupali Tai - Director of Rehabilitation

Appellant's Exhibits: A - letter and progress notes

Appellant's Witness: Appellant testified on his own behalf  
[REDACTED] [REDACTED] - Appellant's [REDACTED]

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], 2023. (Ex. 1.)

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

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

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 ambulates with the assistance

of a walker. He leaves the Facility alone on a regular basis. He is able to manage all his medical and personal needs and is medically stable. (Ex. 1; T. Preziott, Itzkowitz, Tai.)

5. Pursuant to the [REDACTED] 2023, discharge notice, the Facility determined to discharge the Appellant to the [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (ALJ II.)

6. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Director of Nursing, Director of Social Work, and Director of Rehabilitation, that discharge to the community, including to an adult home, is appropriate. (Ex. 1; T. T. Preziotti, Itzkowitz, Tai.)

7. 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], 2023, for care for [REDACTED] [REDACTED] [REDACTED].

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 independent with all ADLs. He is able to walk extended distances by himself with the aid of an assistive device. He was discharged from physical therapy and occupational therapy on [REDACTED] 2023, and he has no further need for rehabilitation. The Appellant refuses physical examinations by the Facility's attending physician and regularly refuses care. The Appellant is able to manage all his medical appointments and other personal matters on his own. (Ex. 1, T. Itzkowitz.)

The Appellant opposes his discharge from the Facility. He was unable, however, to provide an adequate explanation for his desire to remain in a skilled nursing facility other than that he feels he is not ready to leave. He claims that he still has "[REDACTED]" a claim that was adamantly denied by the Director on Nursing. When asked directly if he could take care of himself in an apartment, his response was simply, "yes." (Ex. 1; T. [REDACTED] Itzkowitz.)



It is the opinion of the professionals from all Facility disciplines, including the Director of Nursing and the Director of Rehabilitation, that the Appellant may be safely discharged from the Facility to an adult home. The Appellant testified that he is in the process of obtaining an apartment through the [REDACTED] [REDACTED] program. He is encouraged to continue in this endeavor, and he may do so after discharge from the Facility. (Ex. 1; T. Preziotti, Itzkowitz, Tai.)

The Appellant no longer needs skilled nursing care and is fully capable of fending for himself. Accordingly, the Facility has proven that its determination to discharge the Appellant is correct.

Prior to his stay at the Facility, the Appellant resided with family members in the community. However, the Appellant alleges that that residence is no longer available to him. Although, at the age of [REDACTED] the Appellant is too young to be placed in many care facilities, the Facility has made efforts to assist him in the search for other appropriate living arrangements. Indeed, the Facility has been able to locate an adult home, [REDACTED] [REDACTED] that is willing to accept the Appellant and would be more than sufficient to cover the level of care required by the Appellant. The Appellant, however, has refused to consider [REDACTED]

██████████ because it is too far away from his family. No other facility nearby has been willing to accept the Appellant.

Accordingly, the Facility has proven that its determination to discharge the Appellant to the ██████████ ██████████ ██████████ ██████████ is appropriate.

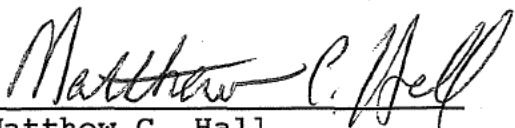
DECISION

Luxor Nursing and Rehabilitation at Mills Pond has established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate.

Luxor Nursing and Rehabilitation at Mills Pond is authorized to discharge the Appellant in accordance with the ██████████ 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  
October 27, 2023

  
Matthew C. Hall  
Administrative Law Judge

To: Mr. [REDACTED] [REDACTED]  
c/o Luxor Nursing and Rehabilitation  
at Mills Pond  
273 Moriches Road  
Saint James, NY 11780

Ms. Lucille Preziotti, DSW  
Luxor Nursing and Rehabilitation  
at Mills Pond  
273 Moriches Road  
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