



# Department of Health

ANDREW M. CUOMO  
Governor

HOWARD A. ZUCKER, M.D., J.D.  
Commissioner

SALLY DRESLIN, M.S., R.N.  
Executive Deputy Commissioner

April 18, 2018

## CERTIFIED MAIL/RETURN RECEIPT

Jaclyn Mollica, MSW  
Bronx Park Rehab and Nursing  
3845 Carpenter Avenue  
Bronx, New York 10467

[REDACTED]  
C/o Bronx Park Rehab and Nursing  
3845 Carpenter Avenue  
Bronx, New York 10467

RE: In the Matter of [REDACTED] 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,

*James F. Horan / eac*  
James F. Horan  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cac  
Enclosure

**STATE OF NEW YORK  
DEPARTMENT OF HEALTH**

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

[REDACTED]

Appellant,

from a determination by

**Bronx Park Rehabilitation  
and Nursing Center**

Respondent,

to discharge him from a residential  
health care facility.

**COPY**

**DECISION**

Hearing Before: Natalie J. Bordeaux  
Administrative Law Judge

Held at: Bronx Park Rehabilitation and Nursing Center  
3845 Carpenter Avenue  
Bronx, New York 10467

Hearing Date: April 10, 2018  
The record closed April 17, 2018

Parties: Bronx Park Rehabilitation and Nursing Center  
By: Steven L. Freifeld, Administrator

[REDACTED]  
*Pro Se*

**JURISDICTION**

By notice dated [redacted] 2018, Bronx Park Rehabilitation and Nursing Center (the Facility), a residential health 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 NYCRR § 415.3(h).

**HEARING RECORD**

Facility witnesses: Melissa Dale, Director of Dietary Services  
Dorys Gil, Rehabilitation Director  
Angelito Esteban, Physical Therapist  
Nainesh Nanwani, Occupational Therapist  
Lisa Baranikas, Activities Director  
Jaclyn Mollica, MSW, Director of Social Services  
Dr. Clyde Weissbart, Attending Physician  
Zymond Corotan, RN, Nursing Supervisor  
Adel Burante, RN, Director of Nursing

Facility exhibits: 1-7

Appellant witnesses: Appellant testified on his own behalf

The notice of hearing, discharge notice, and the accompanying cover letter were marked as ALJ Exhibit I. A digital recording of the hearing was made.

**ISSUES**

Has Bronx Park Rehabilitation and Nursing Center established that its determination to discharge the Appellant was correct and that its discharge plan is appropriate?

**FINDINGS OF FACT**

1. The Appellant is a [redacted] year-old male who was admitted to Bronx Park Rehabilitation and Nursing Center on [redacted] 2015 after undergoing [redacted] of his [redacted] (Facility Exhibit 7.)

2. The Appellant's admitting diagnoses were: [REDACTED] (Facility Exhibit 7.)
3. By notice dated [REDACTED] 2018, the Facility determined to discharge the Appellant on [REDACTED] 2018 because his health has improved sufficiently that he no longer requires skilled nursing care. The notice proposes to discharge the Appellant to [REDACTED] shelter located at [REDACTED] (ALJ Exhibit I.)
4. The Appellant does not require skilled nursing care, and performs all activities of daily living independently. (Facility Exhibits 1-3, 7.)
5. The Appellant's clinical record contains documentation from the Appellant's physician and interdisciplinary care team that the Appellant's needs can be met in the community, and that discharge to the shelter is appropriate. (Facility Exhibits 1, 3-7.)
6. The Appellant remains at Bronx Park Rehabilitation and Nursing Center pending the outcome of this appeal.

#### APPLICABLE LAW

A residential health care facility (also referred to in the 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).

Department regulations at 10 NYCRR § 415.3(h) describe the transfer and discharge rights of residential health care facility residents. They state, 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:

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(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 residential health care facility must prove by substantial evidence that the discharge was necessary, and the discharge plan appropriate. 10 NYCRR § 415.3(h)(2)(iii); State Administrative Procedure Act § 306(1).

#### DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] 2015 from a hospital after undergoing a [REDACTED]. His admitting diagnoses were [REDACTED] [REDACTED] (Facility Exhibits 2, 3 and 7.) The Appellant is also diagnosed with [REDACTED]. His medical conditions are stable, and he receives outpatient treatment as needed from the [REDACTED] [REDACTED] (Facility Exhibit 7; Recording @ 2:52.)

The Facility [REDACTED] 2018 discharge notice advises that the Appellant is being discharged because he "does not require skilled nursing care". (ALJ Exhibit I.) The Appellant is capable of independently performing all activities of daily living, including transferring and ambulating with a wheelchair. He leaves the Facility each day without assistance from others. The Appellant requires no skilled nursing services, and no rehabilitative therapy. (Facility Exhibits 1-7; Recording @ 3:06.)

Dr. Weissbart, the Appellant's attending physician at the Facility, testified that the Appellant should be discharged because he has no need for any services provided by the Facility.

(Recording @ 2:52.) Facility practitioners in other disciplines, including nursing, social work, dietary services, and rehabilitation, also concur that the Appellant does not require services in any of those specialties, and that the Appellant does not request any assistance from the Facility. (Facility Exhibits 1-7; Recording @ 7:36-19:39.)

In support of the Facility's proposed discharge location for the Appellant ( [REDACTED] shelter located in the [REDACTED] Director of Social Services Ms. Mollica explained that the Appellant has no home in the community, and rejected placement attempts at assisted living facilities. (Recording @ 15:48.) The Appellant cannot be placed in an assisted living facility against his will. 18 NYCRR § 494.4(c)(5). The Appellant was searching for an apartment rental with a rent far below the current market rate, which he has been unable to procure. (Recording @ 16:40.) Dr. Weissbart has concluded that the Appellant's needs can be met in a [REDACTED] shelter due to the Appellant's physical independence and the Appellant's continued access to all necessary medical care in the community through the [REDACTED] (Facility Exhibit 1; Recording @ 4:23.)

The Appellant is not contesting the Facility's determination that he does not require services provided by a skilled nursing facility. He objects to the Facility's discharge plan because he does not want to be placed in a homeless shelter. He claimed that the [REDACTED] [REDACTED] has obtained subsidized housing for him in a newly-constructed apartment housing, and seeks to remain at the Facility until he can move into his new apartment. The Appellant conceded that he had not apprised the Facility of this information, and failed to produce any evidence at the hearing to substantiate that an apartment has actually been secured. (Recording @ 20:04.)

The hearing record was held open for one week to afford the Appellant an opportunity to substantiate his claim or provide detailed occupancy information concerning his new apartment. On April 17, 2018, a conference call was held between the parties, during which the Appellant again asserted that he was approved for housing, but had no specific information. He presented Facility Administrator Mr. Freifeld with a promotional flyer from a social services organization that purports to assist veterans with procuring low-cost housing, and a letter from the [REDACTED] [REDACTED] confirming that the Appellant was eligible for the Housing and Urban Development Section 8 Rental Certificate Program. Those documents do not establish that the Appellant has procured, or even applied for, alternate housing. They do not justify an extension of the Appellant's stay at the Facility.

#### CONCLUSION

There is no dispute that the Appellant is completely independent, and receives no assistance from the Facility. The Appellant's sole contention is that he should not be discharged to a homeless shelter. Yet, the record reflects that the Appellant has failed to cooperate with the Facility's effort to secure assisted living and has failed to pursue or advise the Facility of his interest in pursuing subsidized housing, with the result that no alternative discharge plan is available. The Appellant is entitled and encouraged to pursue other options than referral to the shelter, but is not entitled to remain in the Facility while he does so. The Facility's determination at issue here was made in compliance with all applicable regulations, and is therefore upheld.

**DECISION**

Bronx Park Rehabilitation and Nursing Center has established that its determination to discharge the Appellant was correct, and that transfer to a homeless shelter is appropriate.

1. Bronx Park Rehabilitation and Nursing Center is authorized to discharge the Appellant based upon its ██████████ 2018 determination.

Dated: April 18, 2018  
New York, New York

*Natalie Bordeaux*

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Natalie J. Bordeaux  
Administrative Law Judge