



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

February 19, 2019

## CERTIFIED MAIL/RETURN RECEIPT

Anne Weisbrod  
Hebrew Home Riverdale  
5901 Palisade Avenue  
Bronx, New York 10471

[REDACTED]  
c/o Hebrew Home Riverdale  
5901 Palisade Avenue  
Bronx, New York 10471



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  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: cmg  
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

**Hebrew Home for the  
Aged at Riverdale**

Respondent,

to discharge her from a residential  
health care facility.

**ORIGINAL**

**DECISION**

Hearing Before:

Natalie J. Bordeaux  
Administrative Law Judge

Held at:

Hebrew Home for the Aged at Riverdale  
5901 Palisade Avenue  
Bronx, New York 10471

Hearing Date:

January 9, 2019  
The record closed February 15, 2019

Parties:

Hebrew Home for the Aged at Riverdale  
By: Anne Weisbrod, Director of Social Services  
Hebrew Home for the Aged at Riverdale  
5901 Palisade Avenue  
Bronx, New York 10471

[REDACTED]  
*Pro Se*

**JURISDICTION**

By notice dated [REDACTED] 2018, Hebrew Home for the Aged at Riverdale (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (the Appellant). 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: Anica Kenton, Clinical Nurse Manager  
Ernesto Nueva Espana, MD, Attending Physician  
Anne Weisbrod, Director of Social Services

Facility exhibits: 1-5

Appellant witnesses: [REDACTED], Appellant  
[REDACTED], Appellant's [REDACTED]  
[REDACTED] Appellant's [REDACTED]

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 Hebrew Home for the Aged at Riverdale established that its determination to discharge the Appellant was correct and that its discharge plan is appropriate?

**FINDINGS OF FACT**

1. The Appellant is an [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2015 for short-term rehabilitation after experiencing a [REDACTED]. (Facility Exhibit 5.)

2. The Appellant's current diagnoses are: [REDACTED]  
[REDACTED]  
[REDACTED]. (Facility Exhibit 3.)

3. The Appellant does not require skilled nursing care, and performs all activities of daily living independently. (Facility Exhibit 2.)
4. By notice dated █ 2018, the Facility determined to discharge the Appellant on █, 2018 because her health has improved sufficiently that she no longer requires the services provided by the facility. The notice proposes to discharge the Appellant to the █ Shelter, located at █. (Facility Exhibit 1.)
5. The Facility had repeatedly sought to effectuate alternate discharge arrangements for the Appellant, and attempted to communicate with the Appellant and her family about discharge plans for nearly one year before issuing the █ 2018 discharge notice. (Facility Exhibit 4.)
6. 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 2-4.)
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 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 for short-term rehabilitation to aid her recovery from a [REDACTED]. The Appellant is also diagnosed with the following medical conditions which were not the basis for her admission to the Facility: [REDACTED]

[REDACTED] (Facility Exhibits 3 and 5.)

The Appellant's medical conditions are now stable and require neither medical nor skilled nursing intervention. (Recording @ 4:02.) The Appellant is capable of independently performing all activities of daily living, including bathing, transferring, bed mobility, and ambulation. (Facility Exhibit 2; Recording @ 7:02.) The Appellant has completed all prescribed occupational and physical therapies. The Facility currently provides medication to the Appellant which she may also obtain in the community. (Facility Exhibit 3; Recording @ 8:52.)

Dr. Nueva Espana, the Appellant's attending physician at the Facility, has determined that the Appellant may be safely discharged. (Recording @ 10:40.) Practitioners in other

disciplines, including nursing and social work, also agree that the Appellant does not require specialized services from the Facility. (Facility Exhibits 2 and 4; Recording @ 4:02.)

Although the Appellant and her ████████ expressed disagreement with the Facility's determination that she does not require services provided by a skilled nursing facility, they were unable to identify a need for skilled nursing services that would necessitate the Appellant's continued stay at the Facility. (Recording @ 15:23.) Ms. ████████, the Appellant's ████████ contended that the Appellant's conditions have not improved since the date of admission. She insisted that the Appellant requires constant supervision. The Appellant's ████████ contended that the Appellant receives assistance with showering due to the Appellant's limited use of her ████████. She also stated that the Appellant requires monitoring to prevent her from ████████ (Recording @ 17:10.) The Appellant's ████████ explained that the Appellant was previously evicted from two apartments because of ████████ even with cleaning services provided by Adult Protective Services. (Recording @ 16:18, 23:40.)

The Appellant's ████████ a licensed ████████ contended that the Appellant requires skilled care to ensure that her ████████ is adequately monitored and controlled. He asserted that the Appellant's ████████ must be monitored daily and that the Appellant will not adhere to her medication schedule if left unattended, which may ████████. The Appellant's ████████ stated that the Appellant was previously non-compliant with her medication regimen when she lived in the community. (Recording @ 18:50.) ████████ monitoring is a widely-available medical service provided to outpatients and does not justify continued custodial care.

The Facility proposes to discharge the Appellant to a ████████ shelter, a discharge plan which Dr. Nueva Espana concluded is safe and appropriate. He explained that the Appellant will be discharged with at least 30 days' supply of medications and a referral form for

a primary care physician. The Appellant will also be taught how to administer her medications. (Facility Exhibit 4; Recording @ 11:41.)

The Appellant does not have a home in the community. Before determining to discharge the Appellant to [REDACTED] Shelter, the Facility spent considerable time and effort to identify other community discharge locations. Facility records document multiple discussions with the Appellant and her [REDACTED] which yielded no results. Ms. Weisbrod, the Director of Social Services, repeatedly discussed the prospect of transferring the Appellant to an assisted living facility with both the Appellant and her [REDACTED] (Facility Exhibit 4; Recording @ 4:30.)

The Appellant was accepted at an assisted living facility ([REDACTED]), which she and her [REDACTED] found unsuitable. The Appellant's [REDACTED] did not like the location, while the Appellant found the accommodations to be small. More recently, the Appellant's [REDACTED] expressed an interest in securing placement for her mother at [REDACTED]. Ms. Weisbrod had communicated with [REDACTED] and was advised that the Appellant's [REDACTED] was required to submit additional information to finalize the Appellant's application. No further action was taken by the Appellant or her family to procure placement at an assisted living facility. (Recording @ 43:04.)

When asked at the hearing whether she would consider living in other assisted living facilities, the Appellant stated that she would not agree to be transferred to a "deplorable" facility, which she described as offering less amenities than the Facility. The Appellant consistently expressed her unwillingness to reside in an assisted living facility that did not meet those standards. (Recording @ 52:03, 1:05:23.) An assisted living facility cannot legally admit the Appellant against her will. 18 NYCRR §§ 494.4(d)-(e). The Appellant's continued refusal

to accept placement at an assisted living facility eliminates this setting as a possible discharge location.

The Appellant and her family object to the Facility's discharge plan. Both the Appellant's [REDACTED] and [REDACTED] testified that the Appellant has underlying [REDACTED] conditions that render her discharge to any non-custodial, community-based setting unsafe. They believe that the Appellant should reside in a supervised setting where she is prevented from [REDACTED]. The Appellant's son contended that the Facility is aware of the Appellant's need for continued cleaning and her [REDACTED] issues because the Facility frequently cleans the Appellant's room and the Appellant is traumatized from the experience. (Recording @ 28:10.)

Ms. Weisbrod confirmed that Facility staff cleans the Appellant's room and removes expired food items. However, she explained that it is general Facility practice to clean residents' rooms. Facility records for the Appellant contain no [REDACTED] diagnosis. She underwent a [REDACTED] evaluation in 2016, which showed no signs of [REDACTED] symptoms. (Recording @ 31:30.) Although the Appellant's [REDACTED] had subsequently and repeatedly asked the Facility to perform [REDACTED] testing of the Appellant, the Appellant declined. Ms. Weisbrod explained that the Appellant is alert and oriented as to person, place, and time and therefore has the right to object to undergo such examination. (Recording @ 27:00.)

The Appellant stated that cleaning of her room disturbs her because she cannot access her personal property. She also claimed that Facility staff ransacks her clothing and underwear while cleaning. The Appellant recalled being transferred to [REDACTED] Hospital during one cleaning session, but the hospital refused to conduct a [REDACTED] evaluation. She adamantly denied that she hoards food and other perishable items in her room. (Recording @ 32:30.)



The record remained open to afford the Appellant's family more time to obtain information regarding the Appellant's [REDACTED] history. Ms. Weisbrod, Director of Social Services, agreed to assist the Appellant's family by requesting the Appellant's hospital records from [REDACTED] Hospital regarding a prior hospitalization over eight years earlier. (Recording @ 1:12:16.) During a conference call on January 29, 2019 involving all individuals present at the hearing, Ms. Weisbrod confirmed that the hospital had purged all records older than six years, consistent with its record retention obligations under the Health Insurance Portability and Accountability Act (HIPAA.) Despite having successfully procured an adjournment before the originally scheduled hearing date of [REDACTED] 2018, being duly notified of the date of the rescheduled hearing date, and being afforded an additional five weeks after the date of this hearing to obtain documentation to substantiate the assertion that the Appellant is [REDACTED] for any type of community-based housing, the Appellant's [REDACTED] were unable to provide any such information.

The Appellant's [REDACTED] also advised all participants in the January 29, 2019 conference call that she had applied for community-based housing for senior citizens in [REDACTED] [REDACTED] (a location closer to the Appellant's [REDACTED] residence.) She believed that the housing program would render a decision on the Appellant's housing application by [REDACTED] 2019. Most noteworthy is the Appellant's [REDACTED] failure to relay this information to Ms. Weisbrod or other Facility staff, despite the Facility's numerous attempts to procure alternate discharge arrangements and Ms. Weisbrod's requests at the hearing for the Appellant's family to communicate any other ideas for possible discharge locations. Neither the Appellant nor her [REDACTED] have acted reasonably in seeking a constructive solution. The Facility is not required to continue to provide accommodations for a resident who requires no skilled nursing care simply

because neither she nor her [REDACTED] wish to devise alternate solutions that would enable the Appellant to avert discharge to a shelter.

Furthermore, the Appellant's [REDACTED] willingness to place the Appellant in senior housing directly contravenes statements made at the hearing by the Appellant's [REDACTED] regarding the Appellant's purported need for custodial care. Senior housing is simply community-based housing dedicated to senior citizens. It affords no special services which the Appellant's [REDACTED] previously contended are required to keep the Appellant safe and healthy.

Neither the Appellant nor her [REDACTED] have presented justification for further extension of the Appellant's stay at the Facility. The Appellant meets the medical appropriateness criteria for shelter placement delineated by the [REDACTED] Department of Homeless Services. The Facility has established that its discharge plan is appropriate.

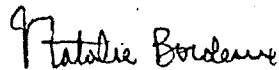
The [REDACTED] 2018 determination is upheld.

#### DECISION

Hebrew Home for the Aged at Riverdale has established that its determination to discharge the Appellant was correct, and that its discharge plan is appropriate.

1. Hebrew Home for the Aged at Riverdale is authorized to discharge the Appellant in accordance with its [REDACTED] 2018 discharge notice.

Dated: February 15, 2019  
New York, New York



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Natalie J. Bordeaux  
Administrative Law Judge