

cc: Ms. Suzanne Caligiuri/Division of Quality & Surveillance by scan
SAPA File
BOA by scan



Department of Health

KATHY HOCHUL
Governor

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

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

May 16, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████ ██████████
c/o Bronxcare Special Care Center
1265 Fulton Avenue
Bronx, New York 10456

Darrel Sokol, NHA
Bronxcare Special Care Center
1265 Fulton Avenue
Bronx, New York 10456

Michael Diven, Esq.
Vigorito, Barker, Patterson, Nichols & Porter LLP
115 E. Stevens Avenue, Suite 206
Valhalla, New York 10595

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 /ny

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: cmg
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

BRONXCARE SPECIAL
CARE CENTER

Respondent,

to discharge him from a residential health
care facility.

COPY

DECISION

Hearing Before: Matthew C. Hall
Administrative Law Judge

Held via WEB EX

Hearing Dates: April 5, 2023

Parties: Bronxcare Special
Care Center
1265 Fulton Avenue
Bronx, New York 10456
By: Michael Divan, Esq.

██████████ ██████████
By: Pro Se

JURISDICTION

Bronxcare Special Care Center (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [REDACTED] [REDACTED] (the Appellant) from the 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).

HEARING RECORD

ALJ Exhibits: I - Notice of Hearing

Facility Exhibits: 1 - Video file
2 - Face Sheet, BIMS, Investigation Report
3 - Comprehensive Care Plan

Facility Witnesses: Paula Rosario, Licensed Social Worker
Ian Andrews, Licensed Practical Nurse
Stephanie Bertram, Certified Nursing Asst.
Shaina Velez, Social Worker
Shalini Roman, Social Worker

Appellant's Witnesses: [REDACTED] [REDACTED] Resident

Interpreter: Miriam Lemus

3. The Facility called the police department, and the Appellant was arrested and removed from the Facility. (Ex.1, T. Rosario.)

4. The Resident returned the next day and was informed by the Facility that he was being discharged. He was given his belongings, including his medications and clothing. When the Facility staff attempted to serve the Appellant with paperwork, he refused to accept or sign any paperwork. The Facility could not provide a discharge notice to the Appellant, because he would not accept it. (T. Rosario, Andrews, Bertram, Velez, Roman.)

5. The Facility determined to discharge the Appellant to a homeless shelter in the vicinity of the Facility. A specific location was not determined because the Appellant would not discuss the matter and would not accept or sign any paperwork presented to him by the Facility. (Ex. 2,3; T. Bertram, Velez, Roman.)

6. The Appellant's BIMS score is a [REDACTED] 15 and he is independent in his Activities of Daily Living (ADLs). He can ambulate with no assistance and can go farther distances with the assistance of a cane or a walker. (Ex. 1,3.)

7. The Facility has attempted to work with the Appellant to find him appropriate living quarters outside of the Facility. The Appellant, however, has refused to cooperate with the Facility's efforts to help him. (T. Rosario, Andrews, Bertram, Velez, Roman.)

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 Sections 2801(2)(3); 10 NYCRR Section 415.2(k).

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR Section 415.3[i][1]).

The Facility alleges the Appellant's discharge is permissible pursuant to 10 NYCRR Section 415(h)(i)(a)(3) and (4), which state in relevant part:

The safety (and health) of individuals in the Facility (are) endangered.

█ 2023, the Appellant referred to a staff member as a █
█ because he had not received enough lemon packets for his
tea. On █ 2022, the Appellant gave an █
to another resident which resulted in that resident's █
On █ █, 2022, the Appellant exhibited █ █
and used █ toward staff members and residents. (Ex. 3;
T. Rosario, Andrews, Bertram, Velez, Roman.)

Finally, on █ █ 2023, the Appellant approached
another resident █ █ who was both █ █ █
█ █ was █ █ and when the Appellant
approached him to █ him █ at the
Appellant. In response, the Appellant "█ █ on the █
and █." Appellant was
arrested and removed from the Facility. (Ex. 1.; T. Rosario,
Andrews.)

The Appellant denies that he █ at all but states,
rather that he simply █, like I do with my █ and
█ "I did not █ him." The video accepted into
evidence as Exhibit 1 however, contradicts the Appellant's
account. It is clear from the video that the Appellant approached
the █, and not only █ him, but
█ (Ex. 1.)

The Facility called the police and had the Appellant arrested due to his [REDACTED] on [REDACTED]. When the Appellant returned to the Facility the next day, he was told that he was discharged from the Facility and was given his belongings, including his medications. The Facility was unable to give a discharge notice to the Appellant because he refused to accept or sign any paperwork they attempted to give him. (T. Rosario, Andrews, Bertram, Velez, Roman.)

The Appellant is both mentally and physically capable of caring for himself. Indeed, he looks quite agile in the video as he is [REDACTED] the other resident. (Ex. 1.)

CONCLUSION

The Facility has established that the Appellant is a danger to the safety and health of individuals in the Facility. Its determination to discharge the Appellant is correct and the proposed discharge location is appropriate.

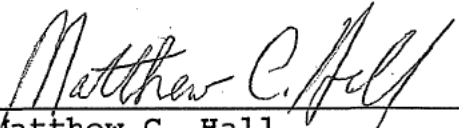
DECISION

The appeal by Appellant is therefore DENIED.

The Facility is authorized to discharge the Appellant upon receipt of this decision.

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
May 16, 2021**


Matthew C. Hall
Administrative Law Judge

To: [REDACTED]
C/O Bronxcare Special Care Center
1265 Fulton Ave
Bronx, New York 10456

Darrel Sokol, Nursing Home Administrator
Bronxcare Special Care Center
1265 Fulton Ave
Bronx, New York 10456

Michael Diven, Esq.
Vigorito, Barker, Patterson, Nichols & Porter LLP
115 E. Stevens Avenue, Suite 206
Valhalla, New York 10595