



## Department of Health

ANDREW M. CUOMO  
Governor

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

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

May 24, 2017

### CERTIFIED MAIL/RETURN RECEIPT

Allison Bellin, LMSW  
Beth Abraham Health Services  
612 Allerton Avenue  
Bronx, NY 10467

[REDACTED] Resident  
c/o Beth Abraham Health Services  
612 Allerton Avenue  
Bronx, NY 10467

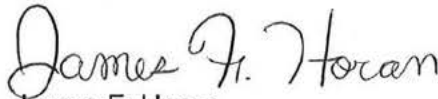
**RE: In the Matter of [REDACTED] - Discharge Appeal**

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  
Chief Administrative Law Judge  
Bureau of Adjudication

JFH: mw  
Enclosure

COPY

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

**BETH ABRAHAM HEALTH SERVICES,**  
Respondent,

to discharge him from a residential health care facility.

**SUPPLEMENTAL  
DECISION**

On May 24, 2017, an “immediate discharge hearing,” via telephone,<sup>1</sup> was held before Kimberly A. O’Brien, Esq., Administrative Law Judge (“ALJ”) <sup>2</sup> At the initial May 5<sup>th</sup> hearing, the ALJ granted the Facility’s request to amend the discharge notice to include an additional reason for discharge “violating the Facility’s smoking policy” [ALJ Ex. 1]. The Facility was granted leave to make a request for an immediate discharge hearing, if after the hearing the Resident failed to honor his commitment to follow the Facility’s smoking policy [ALJ Ex. 2 at p. 5].

On May 9, 2017, the ALJ issued a decision in this matter (“decision”) [ALJ Ex. 2]. The ALJ determined that the Facility met its burden to show that the Resident no longer requires the

<sup>1</sup> The ALJ heard the matter by phone from her office in Albany, New York. The following individuals appeared by phone from the Facility including: Allison Bellin, DSW; Kadine Ranger, Nurse Manager; Chandel Stallworth, Director of Recreation; Ashley Valentin, Recreation Aide; and [REDACTED], Resident/Appellant.

<sup>2</sup> An immediate discharge hearing was scheduled at the Facility on May 18<sup>th</sup>, however, there was miscommunication between the ALJ’s office and the parties. After the ALJ arrived at the Facility on May 18<sup>th</sup>, Ms. Bellin explained that the Facility and the Resident were unaware of the hearing. But she advised the ALJ that on or about May 15, 2017 she believed that the Resident began complying with the smoking policy.

services it provides and that the proposed discharge to the shelter is available and appropriate under the circumstances [ALJ Ex. 2]. While the ALJ denied the Resident's appeal, the ALJ extended the effective date of the discharge from [REDACTED], 2017 to [REDACTED] 2017 ("extension"), to allow the Resident more time to get his affairs in order [ALJ Ex. 2 at p.5]. The extension was based in large part on the Resident's commitment to following the Facility's smoking policy. After the decision was issued, the Facility requested an immediate discharge hearing, alleging that the Resident continued to violate the Facility's smoking policy. The ALJ granted the request and a hearing was held on May 24, 2017 [ALJ Ex. 1, 2 & 3].

The sole purpose of the May 24<sup>th</sup> hearing was to determine whether the Resident continued to violate the smoking policy, thereby endangering himself and others and necessitating that he be discharged from the Facility sooner than [REDACTED].<sup>3</sup> The Facility has shown that the Resident has continued to violate the smoking policy including that he was smoking in non-designated smoking areas. The Resident has also violated the policy by keeping smoking materials, cigarettes and a lighter, in his personal possession; when asked by Facility staff to surrender his smoking materials, he refused to do so [Facility Ex.1; Testimony of Ms. Bellin, Ms. Stallworth and Ms. Valentin]. The Resident admitted that at the May 5<sup>th</sup> hearing, he agreed to follow the smoking policy, but he said he "changed his mind" because he is being discharged from the Facility [Testimony of Mr. [REDACTED]].<sup>4</sup> Accordingly, the ALJ determined that the Resident understands the smoking policy

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<sup>3</sup> Evidence was received, witnesses were sworn or affirmed and examined Exhibits "Ex." include: ALJ Ex. 1 Amended discharge notice; ALJ Ex. 2 May 9, 2017 decision; and ALJ Ex. 3 Ms. Bellin's e-mails requesting an immediate discharge hearing and the ALJ's e-mails granting the requests; Facility Ex. 1 The Facility's Witness List; "Smoking Rules," signed by the Resident on [REDACTED]/2017; Smoking Violation Notices 1-4 [REDACTED]/17-[REDACTED]17; and Facility emails and nursing notes regarding the Resident's smoking violations [REDACTED]17-[REDACTED]17. A digital recording of the proceeding was made.

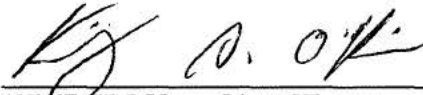
<sup>4</sup> During the hearing, the ALJ sought a renewed commitment from the Resident to follow the smoking policy and surrender his smoking materials, which would be returned upon his discharge from the Facility, but he refused.

and has failed to follow it, and his behavior has endangered himself and others. Accordingly, the Facility may immediately discharge the Resident to the shelter.<sup>5</sup>

### ORDER

1. The Facility may immediately discharge the Resident in accordance with the discharge notice; and
2. This Order may be appealed to a court of competent jurisdiction pursuant to the New York Civil Practice Law and Rules; and
3. This Order shall be effective on service on the parties.

DATED: Albany, New York  
May 24, 2017

  
KIMBERLY A. O'BRIEN  
Administrative Law Judge

██████████, Resident  
c/o Allison Bellin, LMSW  
Beth Abraham Health Services  
612 Allerton Avenue  
Bronx, NY 10467

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Beth Abraham Health Services  
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<sup>5</sup> The ALJ's decision to immediately discharge the Resident to the shelter was put on the hearing record.