



**Department  
of Health**

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Commissioner

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

May 10, 2017

**CERTIFIED MAIL/RETURN RECEIPT**

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

[REDACTED] Resident  
c/o Allison Bellin, LMSW  
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

██████████, Appellant,

from a determination by

**BETH ABRAHAM HEALTH SERVICES,**  
Respondent,

to discharge him from a residential health care facility.

**DECISION**

A Discharge Notification, dated ██████████ 2017, was issued to ██████████, (“Resident” or “Appellant”) by Beth Abraham Health Services (“Facility” or “Respondent”). The Resident appealed the Facility’s proposed Transfer or Discharge. The pre-transfer Hearing was held on May 5, 2017, at the Facility, 612 Allerton Avenue, Bronx, New York, before Kimberly A. O’Brien, Esq., Administrative Law Judge (“ALJ”).

The Facility appeared by Allison Bellin, LMSW. The Appellant appeared in person and testified on his own behalf. The Hearing was held in accordance with the Public Health Law of the State of New York; Part 415 of Volume 10 of the New York Code of Rules and Regulations (“NYCRR”); the United States Code of Federal Regulations (“CFR”) 42 CFR Subpart E (§§431.200 - 431.246) and 42 CFR Part 483; the New York State Administrative Procedure Act; and 10 NYCRR Part 51.

Evidence was received, witnesses were sworn or affirmed and examined. A digital

recording of the proceeding was made. The following individuals were present at the hearing: Allison Bellin, DSW; Ms. Ranger, Nurse Manager; and [REDACTED], Resident/Appellant.

### STATEMENT OF THE CASE

The [REDACTED] 2017 Notice of Transfer or Discharge indicates that pursuant to 10 NYCRR §415.3 (h)(1)(i)(a)(2) the health of the Resident has improved sufficiently so that he no longer requires the services provided by the Facility. The Facility made a determination to discharge the Resident from the Facility to [REDACTED] Shelter, [REDACTED] [REDACTED] [REDACTED] (“shelter”), effective [REDACTED] 2017 [ALJ Ex. 1].<sup>1</sup> The Resident is aware of the Facility’s assertions and appealed his discharge.

### FINDINGS OF FACT

The following findings of fact were made after a review of the entire record in this matter. Citations in brackets refer to exhibits (Ex.) or testimony. These citations represent evidence found persuasive in arriving at a particular finding. Conflicting evidence was considered and rejected in favor of the cited evidence.

1. The Resident, a [REDACTED]-year-old male, was admitted to the Facility on [REDACTED], 2016 for rehabilitation [Ex 1; Testimony of Nurse Ranger].
2. The Resident is alert and oriented and can make his own decisions. He can ambulate [REDACTED] feet and he also uses a wheelchair. He is independent with transfers, feeding, bathing, grooming, dressing and toileting [Testimony of Nurse Ranger; Ex. 1].
3. The Resident does not have friends or family with whom he can live. His only source

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<sup>1</sup> The ALJ granted the Facility’s request to amend its discharge notice to include an additional basis for discharge, violating the Facility’s smoking policy [ALJ Ex. 2].

of income is Social Security, \$900.00 per month. [Testimony of Ms. Bellin & the Resident].

4. The Resident's physician has determined that the Resident's condition is stable and she cleared him for discharge to the shelter [Ex. 1].

### DISCUSSION

Prior to commencing the hearing, the ALJ and the parties had an extensive discussion about the proposed discharge. The Resident has not left the Facility in almost a year. Ms. Bellin said that the Resident has not gone "out on pass" because he is an "elopement risk," and for this reason to go out on pass he must be chaperoned by a friend or family member; but the Resident does not have a chaperone. The Resident denied that he is an elopement risk and said he will return to the Facility if he is allowed to go out on pass. The Resident expressed a strong desire to go out on pass to see his uncle and his mother. His uncle lives in [REDACTED] and his mother lives in [REDACTED]<sup>2</sup>

The Resident lived with his uncle before being admitted to the Facility, but his uncle is no longer able to have the Resident live with him. The Facility proposed to discharge the Resident to the shelter because the Resident does not have any friends or family members that he can move in with. The Resident said he suffers [REDACTED] pain, and he would like to extend his stay to receive more physical therapy. He wishes to remain at the Facility until he feels that he can be discharged. He does not want to go to the shelter and hopes that he can find a "room" in the community, near where his uncle lives.

Ms. Bellin alleged that the Resident has violated the "new" smoking policy in that among

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<sup>2</sup> The resident has an active Access-A-Ride ID card to use for MTA transportation services. It is undisputed that it could take two hours to get to each of these locations via Access-A-Ride. The Facility will provide a "pass" that will allow him enough time to visit with relatives [Testimony of Nurse Ranger].

other things the Resident has had “smoking materials” (cigarettes, lighters or matches) in his personal possession and was seen smoking in areas other than the patio. At the time of the hearing the Resident’s smoking privileges had been revoked, but they were scheduled to be restored on [REDACTED] 2017. The new smoking policy requires that a “recreation aide” hold the smoking materials for the Resident; he will be provided with his cigarettes during smoking breaks out on the “patio.” She expressed concern that the Resident will continue to violate the policy, endangering himself and the other residents. She is also concerned that when the Resident goes out on pass he will bring more smoking materials into the Facility, keep them in his personal possession and smoke inside the facility. The Resident is upset about the new smoking policy, but he denies violating the policy. During the hearing, he acknowledged that he understood the new policy and agreed to abide by it, including that if he obtains smoking materials when he goes out on pass, he will give them to “security” upon his reentry to the Facility and that he will only smoke out on the patio.

Ms. Bellin and Nurse Ranger agreed that since the Facility has proposed to discharge the Resident, he will be allowed to go out on pass unescorted to visit family, and to apply for a “non-driver photo identification” at New York State Department of Motor Vehicles. The Facility will also assist the Resident with applying for a “government phone” and allow him to use the Facility phone to call about rooms for rent.

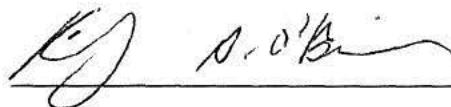
During the hearing, the ALJ made it clear to the parties that the question wasn’t if the Resident was going to be discharged, it was when the discharge would occur. She encouraged the Resident to work with the Facility to prepare for his discharge into the community. While the Resident does not want to leave the Facility, or go to the shelter, the Facility has shown that the Resident does not presently require the services the Facility provides, and under the circumstances the proposed discharge to the shelter is available and appropriate.

The Facility proposed to discharge the Resident on [REDACTED] 2017, but this does not allow much time for the Resident to get his affairs in order. The Resident should understand that he must honor the Facility's policies so long as he is a Resident at the Facility, including its smoking policy. If the Resident fails to honor his commitment to follow the Facility's new smoking policy, the Facility may request an immediate discharge hearing. Absent a request by the Facility for an immediate discharge hearing, the Facility may discharge the Resident on or after [REDACTED], 2017 in accordance with its discharge notice.

**ORDER**

1. The Appeal by the Resident, [REDACTED], of his discharge/transfer is **denied**; and
2. The Facility may discharge the Resident, on or after [REDACTED], 2017, in accordance with the discharge notice; and
3. This Order may be appealed to a court of competent jurisdiction pursuant to the New York Civil Practice Law and Rules; and
4. This Order shall be effective on service on the parties.

DATED: Albany, New York  
May 9, 2017



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KIMBERLY A. O'BRIEN  
Administrative Law Judge

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

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



Beth Abraham Center for Rehabilitation and Nursing  
30-Day Notice

Date of issue:

1/17

Resident Name:

[Redacted]

Designated Representative Name:

[Redacted]

This is to inform you that the Interdisciplinary team has determined that on [Redacted] you will be discharged to [Redacted]

Shelter

You are being discharged from Beth Abraham Center for the following reason(s):

Your health has improved sufficiently to allow a more immediate transfer or discharge as you no longer needs the services provided by the facility, as evidenced by:

The transfer/discharge is being made as a result of your failure, after reasonable and appropriate notice, to pay for care in the facility or to have paid under Medicare or Medicaid. Charges are not in dispute and Medicaid is not pending.

The safety or health of residents in the facility would be endangered, the risk to others is more than theoretical and all reasonable alternatives to transfer or discharge have been explored and have failed to address the problem; as evidenced by:

Your welfare and/or needs cannot be met in the facility, as evidenced by:

The facility is closing.

Addendum: Other reason: Mr. [Redacted] continues to violate the facility smoking rules and has done so repeatedly despite staff interventions.

Signature of Resident/Designated Representative

[Handwritten Signature]

Signature of Administrator

Date

1/17

Date

2017

See reverse side for APPEAL RIGHTS Information.

ALJ Ex. 2



## APPEAL RIGHTS

**IF YOU DO NOT AGREE with this decision**, and you think you are not medically ready for discharge, or feel that your discharge plan will not meet your health care needs, you or your representative may appeal this action to the New York State Department of Health within 15 days of receipt of this notice. The resident has the right to an evidentiary hearing to appeal the proposed discharge or transfer.

- If the appeal request is made within 15 days of the date the resident received the discharge/transfer notice, the resident must remain in the facility, except in cases of imminent danger, pending the appeal hearing decision.
- The hearing may be held post-discharge if the appeal request is made after 15 days following the date of receipt of the notice.
- The resident has 90 days from the date the notice is received to request an appeal hearing.
- In cases of a resident discharged/transferred due to imminent danger, if he/she prevails at the hearing, he/she has the right to return to the bed he/she occupied prior to the discharge/transfer. The facility must hold the bed until the matter is settled by appeal hearing.

### To request an appeal, contact the New York State Department of Health:

Department of Health Centralized Complaint Intake Program (CCIP)  
875 Central Ave, Albany NY 12206  
Telephone (888) 201-4563  
Fax (518) 408-1157

The following agencies will also be able to assist you in the appeal process:

**NYS Long Term Care Ombudsman: 1-855-582-6769**

NYC Mr. Barry Schechter, 11 Park Place, Suite 1110, New York, NY 10007. (212) 962-2720.

For residents who are developmentally disabled or have mental illness, you can also contact:

**The Justice Center:** 161 Delaware Avenue, Delmar, NY 12054. (518) 549-0200.

TTY: Dial 7-1-1 for NYS Relay and give the operator 1-518-549-0200

<http://www.justicecenter.ny.gov/>

**Commissions on Quality of Care for the Mentally Disabled:** 401 State Street, Schenectady, NY 12305 (800)624-4143

**New York Office for the Aging:** 2 Empire State Plaza, Albany, NY 12224. (518) 549-8944 or

(800)342-9871