



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

July 13, 2018

**CERTIFIED MAIL/RETURN RECEIPT**

Rayna Terry-Taylor  
Director of Social Services  
1249 5<sup>th</sup> Avenue  
New York, New York 10029

[REDACTED]  
Bronx-Lebanon Hospital  
1265 Franklin Avenue  
Bronx, New York 10456

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

Dear Parties:

Enclosed please find the Final 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: cac  
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

**Terence Cardinal Cooke  
Health Care Center**

Respondent,

to discharge her from a residential  
health care facility.

**COPY**

**FINAL  
DECISION  
AND  
ORDER**


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Hearing Before: Natalie J. Bordeaux  
Administrative Law Judge

Hearing Location: Bronx-Lebanon Hospital  
1265 Franklin Avenue  
Bronx, New York 10456

Hearing Date: June 18, 2018  
Transcript received July 10, 2018

Parties: Terence Cardinal Cooke Health Care Center  
By: Rayna Terry-Taylor, Director of Social Services  
1249 5<sup>th</sup> Avenue  
New York, New York 10029

  
*Pro Se*

**JURISDICTION**

By notice dated [REDACTED] 2018, Terence Cardinal Cooke Health Care Center (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law (PHL), 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: Rayna Terry-Taylor, Director of Social Services  
Tiffany Hinds, Director of Nursing  
Linda Watson, Nurse Manager

Facility exhibits: 1 [REDACTED] 2018 discharge notice)  
2 (resident face sheet)

Appellant witnesses: [REDACTED] Appellant  
Andy Benejam, Director of Social Work, Bronx-Lebanon Hospital  
Elba Contreras, Social Worker, Bronx-Lebanon Hospital

Appellant exhibits: A (Appellant's shelter packet submitted on [REDACTED] 2018 to the [REDACTED] Shelter)

The notice of hearing and discharge notice were marked as ALJ Exhibit I. A transcript (T) of the hearing was made.

**ISSUES**

Has Terence Cardinal Cooke Health Care Center established that its determination to discharge the Appellant was necessary and the discharge plan appropriate?

**FINDINGS OF FACT**

1. The Appellant is [REDACTED] year-old [REDACTED] female who was admitted to the Facility on [REDACTED] 2017. (Facility Exhibit 2; T 12, 17, 37.)

2. The Appellant's admitting diagnoses were [REDACTED]

[REDACTED] (Facility Exhibit 2.)

3. By notice dated [REDACTED] 2018, the Facility advised the Appellant of its determination to discharge her on [REDACTED] 2018 because her health has improved sufficiently so that she no longer needs the services of the facility. The notice advised the Appellant that she would be discharged to [REDACTED] Shelter located at [REDACTED]

[REDACTED] (Facility Exhibit 1.)

4. The Appellant was transported to [REDACTED] Shelter that same day. When she arrived, shelter staff concluded that shelter placement for the Appellant was medically inappropriate, and contacted the 911 emergency call center to have the Appellant transported to Bronx-Lebanon Hospital (Bronx-Lebanon.) (T 20.)

5. Bronx-Lebanon admitted the Appellant after verifying that the Facility would not allow the Appellant to return. (T 21.)

6. The Appellant has no medical need for hospitalization. (T48-49.)

7. On [REDACTED] 2018, an interim decision and order was issued, in which the Facility was directed to re-admit the Appellant to the next available semi-private bed.

8. The present decision is the final administrative determination regarding the 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. PHL §§ 2801(2)&(3); 10 NYCRR § 415.2(k).

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;

When a residential health care facility determines to discharge a resident because the resident's health has improved such that the resident no longer requires the facility's services, the facility must ensure that the resident's clinical record contains complete documentation made by the resident's physician and, as appropriate, by the resident's interdisciplinary care team. 10 NYCRR § 415.3(h)(1)(ii). The residential health care facility must prove by substantial evidence that the discharge was necessary, and the discharge plan was appropriate. 10 NYCRR § 415.3(h)(2)(iii); State Administrative Procedure Act § 306(1).

**DISCUSSION**

The Appellant was admitted to the Facility on [REDACTED] 2017 for skilled nursing care of fall-related injuries. (T 14.) Her admitting diagnoses include: [REDACTED] pain due to [REDACTED]

[REDACTED] She is [REDACTED] (Facility Exhibit 2; T 12, 17.)

On [REDACTED] 2018, the Facility transmitted Department of Homeless (DHS) forms to [REDACTED] Shelter to effectuate the Appellant's shelter placement. The completed Shelter Screening Form advised that the Appellant independently utilized her [REDACTED] had no need for [REDACTED] to manage her [REDACTED] and was able to transfer herself unassisted. Facility Physician Micheline Epstein attested that the Appellant met all screening criteria and was medically appropriate for shelter or outreach placement. (Appellant Exhibit A.)

By notice date [REDACTED] 2018, the Facility advised the Appellant of its determination to discharge her because her health has improved to the extent that she no longer requires the services provided by the Facility. The notice also informed the Appellant that she would be discharged to [REDACTED] Shelter on the date of the determination. (Facility Exhibit 1.) The Appellant was transported to [REDACTED] Shelter later that same day. Shortly after her entry, DHS staff concluded that the shelter was incapable of addressing the Appellant's medical needs and contacted the 911 Emergency Management System (EMS) to have her transferred to Bronx-Lebanon, a local hospital. (T 18, 20.) This hearing was requested to contest the Facility's discharge determination and the discharge plan.

At the hearing, the Facility failed to provide any documentation to support the assertion that the Appellant's conditions have sufficiently improved. Although the testimony of Facility witnesses emphasized the Appellant's non-receipt of nursing care (*e.g.*, T 13,) the record reflects that the Appellant requires continued daily assistance with personal care, and medical management of her [REDACTED] conditions.

The Appellant has sustained [REDACTED] causing [REDACTED] pain and limiting her self-sufficiency. She is also diagnosed with a [REDACTED] which [REDACTED]

[REDACTED] The Appellant cannot perform the



independently. In addition, she requires assistance with dressing and diaper changes, and supervision when bathing and transferring. (T 22-23, 35, 37-40, 42-43.)

Regarding the Appellant's mental health, Rayna Terry-Taylor, the Facility's Director of Social Services, asserted that the Facility had "exhausted" all on-site treatment options. (T 17, 27.) The Facility's cessation of the Appellant's treatment does not establish that the Appellant's conditions may be safely managed as an outpatient. When she was brought to Bronx-Lebanon, the Appellant was observed to be in a state of (T 28.) However, hospital nursing, and social work staff stabilized the Appellant's conditions with daily therapy, monitoring, and medication management. (T 35.) The Appellant's and physical conditions have not improved to such an extent that she no longer requires the services of a residential health care facility.

Regarding the Facility's discharge plan, Ms. Terry-Taylor testified that the Appellant's physical limitations were accommodated at Shelter because she was placed on the first floor. She also contended that the shelter employs medical staff to monitor and assist the Appellant. (T 6, 17, 32.) Facility witnesses did not explain why the Appellant, despite her alleged physical independence, would require monitoring and assistance by medical personnel.

Shelter is an intake facility, and not a shelter designated for individuals with specific medical needs. (Appellant Exhibit A; T 29.) The Appellant requires personal care assistance and social support for h conditions which are unavailable at a shelter. Bronx-Lebanon's Director of Social Work Andy Benejam expressed concern for the deterioration of the Appellant's without necessary and social work assistance. (T 21-23.)

The Facility was required to provide a discharge plan that addresses the Appellant's medical needs and how those needs will be met after discharge. 10 NYCRR § 415.3(h)(1)(vi). The paperwork submitted by the Facility to DHS offered inaccurate and misleading information pertaining to the Appellant's abilities and medical needs. The completed forms incorrectly indicated that the Appellant was self-sufficient and required no special medical supplies when she in fact requires assistance with transfers, bathing, bladder continence, and [REDACTED], along with [REDACTED]. Facility staff did not ensure that the Appellant's medical needs would be accommodated at the shelter before her discharge. [REDACTED] Shelter was unable to assist the Appellant with her medical and physical needs.

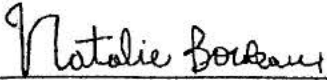
The Facility has failed to establish that the Appellant no longer required the services of a skilled nursing facility and that her transfer to a women's shelter was medically appropriate. The Facility's determination is not sustained.

### **DECISION AND ORDER**

Terence Cardinal Cooke Health Care Center has not established that its determination to discharge the Appellant was necessary and its discharge plan appropriate.

1. Terence Cardinal Cooke Health Care Center is directed to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the facility, pursuant to 10 NYCRR § 415.3(h)(2)(i)(d).

Dated: July 12, 2018  
New York, New York

  
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Natalie J. Bordeaux  
Administrative Law Judge