



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

January 2, 2019

## CERTIFIED MAIL/RETURN RECEIPT

Donna Delgado, SW  
North Central Bronx Hospital  
3424 Kossuth Avenue  
Bronx, New York 10467

Angela C. Bellizzi, Esq.  
225 Crossway Park Drive  
Woodbury, New York 11797

Laurence Abrams, NHA  
Workman's Circle Multicare Center  
3155 Grace Avenue  
Bronx, New York 10469

██████████  
c/o North Central Bronx Hospital  
3424 Kossuth Avenue  
Bronx, New York 10467

**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,

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

**Workmen's Circle Multicare Center**  
Respondent,

to discharge him from a residential  
health care facility.

**ORIGINAL**

**DECISION**

Hearing Before: Natalie J. Bordeaux, Administrative Law Judge

Held at: North Central Bronx Hospital  
3424 Kossuth Avenue  
Bronx, NY 10467

Parties: Workmen's Circle Multicare Center  
By: Angela C. Bellizzi, Esq.  
225 Crossways Pk. Dr.  
Woodbury, NY 11797

By: [REDACTED]

**JURISDICTION**

Workmen's Circle Multicare Center (the Facility), a residential health care facility subject to Article 28 of the New York Public Health Law, determined to discharge Raymond Moore (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: Jo-jami Eigo, Nurse Supervisor  
Bamidele Akinyooye, LPN  
Vivette Henry, Social Services Director  
Dr. Clyde Weissbart, Attending Physician (by telephone)

Facility exhibits: 1-6

Appellant witnesses: Donna Delgado, LCSW, North Central Bronx Hospital  
[redacted], Appellant's [redacted]  
[redacted], Appellant's [redacted]

Appellant exhibits: A

ALJ exhibits: I

A digital recording of the hearing was made.

**ISSUES**

Has Workmen's Circle Multicare Center established that the Appellant's discharge was necessary and the discharge plan appropriate?

**FINDINGS OF FACT**

1. The Appellant is a [redacted]-year-old male who was admitted to the Facility on [redacted] 2018 for rehabilitation after hospitalization. His admitting diagnoses were: [redacted]

[redacted]

[redacted] (Exhibit 6.)

2. On █ 2018, the Facility's █ met with the Appellant after receiving reports of the Appellant's non-compliance with care, and "█ statements made toward nursing staff." The █ convinced the Appellant to consent to being transferred for a █ evaluation. The Appellant was then transferred to North Central Bronx Hospital (NCBH) that same day. (Exhibit 5.)
3. On █, 2018, NCBH's medical team concluded that the Appellant's conditions were stable and sought to effectuate the Appellant's return to the Facility. (Recording @ 2:33.)
4. On █ 2018, NCBH was informed that the Facility would not allow the Appellant to return and admitted the Appellant to a medical/surgical unit. (Recording @ 5:38.)
5. The Facility failed to advise the Appellant's designated representative in writing that the Appellant was being discharged. (Exhibit 3.)
6. The Appellant has no need for hospitalization. (Exhibit A; Recording @ 3:01.)

#### 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).

Department regulations at 10 NYCRR § 415.3(h)(1)(i) describe the permissible bases upon which a residential health care facility may transfer or discharge a resident. The residential health care facility must notify the resident and a designated representative, if any, of the transfer or discharge and the reasons for the move in writing. Such notice must be provided no later than the date on which a determination was made to transfer or discharge the resident. 10 NYCRR §§ 415.3(h)(1)(iii)-(iv).

### DISCUSSION

The Appellant was admitted to the Facility on [REDACTED] 2018 for rehabilitation after hospitalization. Since his admission, the Appellant frequently refused care and the cleaning of his room, and has [REDACTED] to [REDACTED] and [REDACTED] at Facility staff. (Exhibits 2, 3 and 4.)

On [REDACTED], 2018, the Appellant was transported to NCBH after [REDACTED] staff and continuing to refuse care. (Exhibits 2-5.) When NCBH Social Worker Donna Delgado electronically advised the Facility that the Appellant's condition was stable and that he was ready to return to the nursing home, the Facility refused to allow the Appellant to return. (Recording @ 5:38.)

The Facility provided no written notice to the Appellant's [REDACTED] (his designated representative pursuant to 10 NYCRR § 415.2(f)(1)) of its refusal to re-admit the Appellant. Facility Nurse Supervisor Jo-jami Eigo contended that Facility staff advised the Appellant's [REDACTED] by telephone of the Appellant's transfer, and handed the Appellant a discharge notice before he was physically removed from the premises. (Exhibit 1; Recording @ 22:01, 35:10.) Even if a written notice was given to the Appellant, he was in no position to understand the significance of the discharge notice because his cognitive function is impaired and he received a misleading verbal explanation for his visit to the hospital. (Recording @ 4:24.) The Facility's [REDACTED] obtained the Appellant's consent to his physical removal from the premises by informing him that he would be taken to the hospital for an evaluation, information which the Appellant repeated to evaluating hospital staff. (Exhibits A and 5.)

In addition, the Facility has devised no discharge plan for the Appellant. Dr. Weissbart, a Facility physician, testified that he had little to no first-hand knowledge of the Appellant's case. However, he opined that the Appellant's discharge to an acute care hospital is appropriate

because the Appellant cannot return to the Facility. (Recording @ 1:09:33.) It is the Facility's position that NCBH bears responsibility for conducting a psychiatric evaluation of the Appellant and finding a suitable discharge location. (Recording @ 40:53.) These statements belie the requirements set forth in 10 NYCRR § 415.3(h)(1)(vi). It is not NCBH's legal obligation to procure a suitable discharge plan for the Appellant. The Facility bears responsibility for the Appellant's care and any discharge planning.


The Facility was required to advise the Appellant and his designated representative in writing that he was being discharged, and the reasons why he was being discharged. 10 NYCRR § 415.3(h)(1)(iii). Neither the Appellant nor his designated representative were afforded such notice. Furthermore, the Appellant's discharge to NCBH, an acute care hospital, is not an appropriate discharge plan. While the Facility is legally authorized to remove the Appellant from its premises for medical evaluation and treatment, there is no legal authority for the Facility to refuse to re-admit the Appellant after he is cleared by the evaluating hospital to be able to return. The Facility's determination fails to comport with regulatory requirements and is not sustained.

#### **DECISION AND ORDER**

Workmen's Circle Multicare Center has not established that the Appellant's discharge was necessary and the discharge plan appropriate.

Workmen's Circle Multicare 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: December 31, 2018  
New York, New York



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Natalie J. Bordeaux  
Administrative Law Judge