



# Department of Health

ANDREW M. CUOMO  
Governor

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

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

June 18, 2019

## CERTIFIED MAIL/RETURN RECEIPT

██████████  
c/o Fordham Nursing & Rehabilitation Center  
2678 Kingsbridge Terrace  
Bronx, New York 10463

Jillian Bosinius, Director of Social Work  
Fordham Nursing & Rehabilitation Center  
2678 Kingsbridge Terrace  
Bronx, New York 10463

Elaine C. Garbaty, Social Work Supervisor  
North Central Bronx Hospital  
3424 Kossuth Avenue  
Bronx, New York 10467

Ita Parnass, Esq.  
Furman Kornfeld & Brennan LLP  
61 Broadway, 26<sup>th</sup> Floor  
New York, New York 10006

Angela C. Bellizzi, Esq.  
Cassena Care LLC  
225 Crossways Park Drive  
Woodbury, New York 11797

**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**

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In the Matter of an Appeal pursuant to  
10 NYCRR §415.3 by

██████████,

Appellant,

from a determination by

**Fordham Nursing & Rehabilitation Center,**

Respondent,

to transfer him from a residential health care facility.

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**COPY**

**DECISION**

**Hearing Before:**

Ann H. Gayle  
Administrative Law Judge

**Held at:**

North Central Bronx Hospital  
3424 Kossuth Avenue  
Bronx, New York 10467

**Hearing Date:**

May 8, 2019  
The record closed on May 30, 2019

**Parties:**

Fordham Nursing & Rehabilitation Center  
By: Angela C. Bellizzi, Esq.  
Cassena Care LLC

██████████  
*Pro Se*

**Also Participating:**

North Central Bronx Hospital  
By: Ita Parnass, Esq.  
Furman Kornfeld & Brennan LLP

Pursuant to Public Health Law (“PHL”) §2801 and Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“10 NYCRR”) §415.2(k), a residential health care facility or nursing home such as Fordham Nursing & Rehabilitation Center (“Respondent” or “Facility”) is a residential facility providing nursing care to sick, invalid, infirm, disabled, or convalescent persons who need regular nursing services or other professional services but who do not need the services of a general hospital. Transfer and discharge rights of nursing home residents are set forth at 10 NYCRR §415.3.

Respondent determined to discharge ██████████ (“Appellant” or “Resident”) from care and treatment in its nursing home pursuant to 10 NYCRR §415.3(h). §415.3(h)(1)(i)(a)(1), (vi) and (vii) read in pertinent part:

(h) Transfer and discharge rights.

...  
(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:

(1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met ...in the facility.

...  
(vi) provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility in the form of a discharge plan which addresses the medical needs of the resident and how these will be met after discharge, and provide a discharge summary pursuant to section 415.11, subdivision (d) of this Title; and

(vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.

North Central Bronx Hospital (“NCB”), on behalf of Appellant, appealed the discharge determination to the New York State Department of Health. Pursuant to §415.3(h)(2)(iii)(b) the Facility has the burden of proving that the transfer was necessary and the discharge plan is appropriate.

A transcript (pages 1-51) of this hearing was made by a court reporting service. Appellant appeared at the hearing and represented himself with the assistance of NCB representatives and NCB’s attorney, Ita Parnass. Facility representatives appeared at the hearing and were represented by Respondent’s attorney, Angela C. Bellizzi.

The following documents were accepted into evidence/*marked for identification*\* by the Administrative Law Judge (“ALJ”) as ALJ, Facility, and Resident Exhibits:

ALJ:

I: Notice of Hearing

Facility:

- 1: *marked for identification*: █/19 behavioral contract
- 2: █/19 transfer/discharge notice
- 3: *marked for identification*: █/19 █ consult form

Resident:

- A: *marked for identification*: █ 19 PRI
- B: *marked for identification*: printout from PRI system

\*Documents marked for identification but not accepted into evidence by the ALJ remained with the proponent of the document.

**STATEMENT OF ISSUES**

On █ 2019, Respondent transferred Appellant to the NCB emergency room. Appellant was admitted to NCB on that date, and he was cleared medically and █ for discharge on █ 2019, but Respondent refused to readmit Appellant to its facility. The initial issue to be determined in this proceeding is whether Appellant was transferred/discharged in accord with his rights pursuant to 10 NYCRR §415.3.

**FINDINGS OF FACT**

Citations in parentheses refer to exhibits (“Ex”) and testimony of witnesses in the transcript (“T”) found persuasive in arriving at a particular finding.

1. Respondent, Fordham Nursing & Rehabilitation Center, is a residential health care facility located in Bronx, New York. Appellant, age ██████ was admitted to the Facility in ██████ 2018.
2. By Notice of Transfer/Discharge (“Discharge Notice”)<sup>1</sup> dated ██████ 2019, Respondent determined to discharge Appellant on the grounds that the transfer or discharge was being issued for Appellant’s welfare as his needs could not currently be met by the services available at the Facility due to his behavioral symptoms. The transfer was to be effective ██████ 2019. (Ex 2)
3. On ██████, 2019, Respondent transferred Appellant to the NCB emergency room due to his alleged ██████ behavior and conduct at the Facility; NCB admitted Appellant to its ██████ unit on that date. On ██████, 2019, Appellant was moved within NCB from a ██████ unit to a medical unit when he was “████████ cleared and stable” but required ██████ antibiotic treatment for ██████ On ██████ 2019, Appellant was cleared medically and ██████ for discharge, but Respondent refused to readmit Appellant. (T 24-25, 43-44)

**DISCUSSION**

Respondent represented that it was refusing to readmit Appellant because it believed a SCREEN/ PASSR II of Appellant was required in order for Respondent to determine if the Facility would readmit him. NCB, on behalf of Appellant, contended that a SCREEN/ PASSR II was not required for a readmission. Since the issue in dispute was a legal issue, the parties opted

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<sup>1</sup> Appellant denies receiving the Discharge Notice.

to present legal argument in lieu of formal testimony. At the conclusion of the legal argument, the ALJ ruled as follows:

A hospital is not an appropriate discharge location for a resident of a nursing home. It appears that the transfer [to NCB] was appropriate, but now that [Appellant is] ready for discharge, this location, the hospital, is not an appropriate placement for [him], and the statutes, the regulations, the "Frequently Asked Questions" and the instructions for SCREEN form that were read into the record and provided to me do not indicate that a PASSR II or SCREEN Level II is warranted by the regulations at this time. Since the hospital is not an appropriate discharge location, this would not be a new admission [to the Facility]; it would be a readmission. I'm therefore directing the Facility to readmit [Appellant] to the first available bed at its facility. (T 45)

Following this ruling, Ms. Bosinius contacted the Facility's admissions office and learned that a semi-private bed would be available for Appellant on ██████ (the day following the hearing), and Ms. Garbaty reported that NCB would arrange Appellant's transport to the Facility (T 46-47). Appellant was to be discharged from NCB to the Facility on ██████ 2019. An interim order was prepared by the attorneys, and the ALJ signed it at the hearing. The interim order is attached to and incorporated into this Decision.

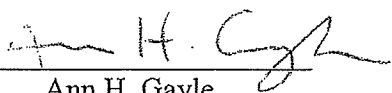
#### DECISION

The appeal by Appellant is GRANTED.

Respondent must readmit Appellant to its Facility before it admits any other resident.

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: New York, New York  
June 18, 2019

  
Ann H. Gayle  
Administrative Law Judge

[REDACTED]/Fordham

**TO:**

[REDACTED]  
c/o Fordham Nursing & Rehabilitation Center  
2678 Kingsbridge Terrace  
Bronx, New York 10463

Jillian Bosinius, Director of Social Work  
Fordham Nursing & Rehabilitation Center  
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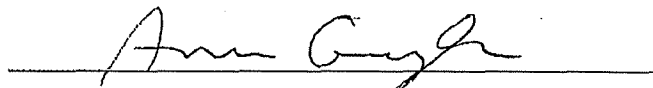
APPENDIX I

In the Matter of [REDACTED]:

A hearing having commenced on May 8, 2019 and evidence having been presented by counsel for NYC H+H/ North Central Bronx Hospital and Fordham Nursing and Rehabilitation Center, and [REDACTED] being present at the hearing and the Parties having agreed to present legal arguments in lieu of formal testimony, Administrative Law Judge Ann Gayle rendered a decision on the record on May 8, 2019, directing Fordham Nursing and Rehabilitation Center to accept [REDACTED] for re-admission without the hospital's completion of a new SCREEN and an Ascend level II Referral.

It will be the responsibility of Fordham Nursing and Rehabilitation Center to complete the required documentation and submit to Ascend for review and determination.

A formal Decision from Administrative Law Judge Gayle will follow.

A handwritten signature in cursive script, reading "Ann Gayle", is written over a horizontal line.

Dated: May 8, 2019

Ann Gayle