

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**UNITED STATES OF AMERICA**

**v.**

**CAUSE NO. 1:02-CR-1144-VEC**

**BERNARD J. EBBERS**

**NOTICE OF FILING OF SUPPLEMENTAL EXHIBIT**

Bernard J. Ebbers, by and through counsel, hereby submits this Notice of Filing of Supplemental Exhibit in support of his Motion for Reduction In Sentence (Docket # 350).

Ebbers submits the attached “Reduction in Sentence Medical Review/Summary” as Exhibit “7” in support of his Motion. This document, which was not available at the time the Motion was filed, was recently received by counsel for Mr. Ebbers.

This document further supports the relief requested in the Motion, as it confirms Mr. Ebbers has an age-related “medical condition that is progressive and incurable”. Exhibit “7,” RIS Medical Summary at p. 2.

Further, at the bottom of page 2 BOP acknowledges that Mr. Ebbers suffers “from a chronic condition related to the aging process or is experiencing deteriorating physical (or mental) health that substantially diminishes his/her ability to function in a correctional facility.” Exhibit “7,” RIS Medical Summary at p. 2, Section II. BOP also acknowledges that BOP cannot “provide conventional treatment that can substantially improve the inmate’s mental or physical condition.” Exhibit “7,” RIS Medical Summary at p. 2, Section II.

Without agreeing with everything in the RIS Medical Summary, Ebbers notes that the above findings support his Argument for Extraordinary and Compelling Reasons for Reduction in Sentence related to Age and Medical Conditions. *See* Docket # 350, Motion for Reduction in Sentence at pp. 13-21.

RESPECTFULLY SUBMITTED this the 30<sup>th</sup> day of September, 2019.

BY: /s/ Graham P. Carner  
GRAHAM P. CARNER

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**CERTIFICATE OF SERVICE**

I, Graham P. Carner, do hereby certify that I served a true and correct copy of the above and foregoing document by electronically filing same in accordance with this Court's electronic filing procedures, resulting in notice to ALL COUNSEL OF RECORD.

So certified this the 30<sup>th</sup> day of September, 2019.

/s/ Graham P. Carner  
GRAHAM P. CARNE

### Reduction In Sentence Medical Review/Summary

A medical summary is required for any inmate who is recommended by the warden for a Reduction in Sentence due to a medical condition. There are two categories to consider: 1) Elderly Component (Age 65 or over with a medical condition), or 2) Medical Component (terminal or medical debilitated). The "Elderly" component and "Medical" component both require a medical summary from the institution Clinical Director documenting the inmate meets the medical criteria. See PS 5050.49 for further clarification.

*This form is a tool that can be used to document the medical summary for a RIS.*

INSTITUTION FMC Ft Worth	REGION South Central	COMPLETED BY Sergio Mercado Jr. MD	DATE 8/27/2019
INMATE NAME EBBERS, BERNARD J	REG. NO. 56022-054	INMATE AGE 77	DATE OF INCARCERATION Incarceration Date
PREJCTED RELEASE DATE 07/04/2028			
FOR WHAT RIS CATIGORY IS INMATE BEING CONSIDERED? (CHOOSE ONLY ONE CATIGORY)			
Elderly with a Medical Condition <input checked="" type="checkbox"/> Medically Debilitated <input type="checkbox"/> Terminal Medical Condition <input type="checkbox"/>			
<i>If category is "Elderly with Medical Condition" complete Section I &amp; II.            If "Terminal" or " Medically Debilitated", complete Section I &amp; III.</i>			
<b>SECION I: MEDICAL SUMMARY</b>			
<b>HISTORY OF COMPLAINT</b>			
Mr. Ebbers is applying for a reduction in sentence under the criteria for elderly with a debilitated medical condition. He claims that during the time of his incarceration he has developed severe macular degeneration that has left him blind and unable to function inside a prison. He also says that he has ischemic cardiomyopathy with a low ejection fraction which puts him at risk for sudden cardiac death. He cites these two medical conditions as sufficient to meet the criteria for this request.			
<b>PAST MEDICAL HISTORY</b>			
Hypertension, hyperlipidemia, ischemic cardiomyopathy, CHF, prediabetes, iron deficiency anemia, Age Related Macular Degeneration.			
<b>PAST SURGICAL HISTORY</b>			
Cardiac Catheterization in 2016, Cardiac defibrillator was placed on 2/23/17			
<b>MEDICATIONS</b>			
Aspirin 81 MG EC Tab, Take one tablet (81 MG) by mouth every morning with food; Atorvastatin 10 MG Tab Take one tablet (10 MG) by mouth each evening; Ferrous Gluconate 324 (5 GR) MG Tab Take one tablet by mouth twice daily; Lisinopril 5 MG Tab Take three tablets (15 MG) by mouth each day; Metoprolol Succ XL 24 Hour 25 MG Tab Take one tablet (25 MG) by mouth each day.			
<b>ALLERGIES</b>			
No Known Allergies			
<b>SOCIAL HISTORY</b>			
Non Contributory			
<b>FAMILY HISTORY</b>			
Non Contributory			
<b>PHYSICAL EXAMINATION</b>			
8/7/19			
<b>VITAL SIGNS</b>			
Temperature: 96.8	Heart Rate: 88	Respiratory Rate: 16	Blood Pressure 110/55
<b>GENERAL</b>			
He walks in on his own without any difficulty, he is fully alert and oriented as to person, place and time. He is well groomed and appears well.			
<b>HEAD AND NECK</b>			
Head is normocephalic, without any deformities, neck is symmetric without any thyroidmegaly or palpable nodules. EYES are PERLA with pale conjunctiva.			
<b>RESPIRATORY</b>			
Lungs are clear bilaterally, no wheezing or crackles.			
<b>CARDIOVASCULAR</b>			
Heart rate is regular, with a systolic murmur. Pacemaker/Defibrillator in upper left chest.			

<b>ABDOMEN</b>
Abdomen is flat, soft, depressible, non-tender, and without any palpable masses. No inguinal hernia(s) palpated.
<b>EXTREMITIES</b>
Symmetrical, no deformities, full range of motion, pulses normal, reflexes present, muscle tone normal.
<b>DIAGNOSTIC DATA (INCLUDE TEST RESULTS, CONSULTATIONS, REFERRAL REPORTS/OPINIONS)</b>
CMP 7/16/19 CBC 7/16/19 Lipids, TSH, A1c 7/31/18 Cardiology consults: 4/4/19, 1/17/19, 7/12/18, 12/14/17, 8/10/17 Cardic Device Checks: 8/8/19, 11/15/18, 7/26/18 Echocardiogram: 12/12/18 Ophthalmology consults: 1/29/19, 11/2/18 GI consult: 10/18/17
<b>DIAGNOSIS</b>
Hypertension, hyperlipidemia, ischemic cardiomyopathy, CHF, iron deficiency anemia, age related macular degeneration, Bilateral inguinal hernias.
<b>HOSPITAL COURSE AND TREATMENT</b>
Mr. Ebbers was transferred from FCI Oakdale to FTW on 4/27/17 for continuation of care after having placement of a defibrillator secondary to CHF with a low ejection fraction. It was noted that he had a history of hypertension, ischemic cardiomyopathy, hyperlipidemia, and AGE RELATED MACULAR EDEMA. Upon his initial evaluation, his vision was found to be 20/400 in both eyes, which met criteria for being legally blind. Despite this level of visual impairment, Mr. Ebbers stated that he had no physical limitations and was actually physically active. He admitted that on occasions he would ask for assistance from his cellmate to ambulate for long distances. His main complaint at the time was his inability to read. He was consulted to Cardiology, Ophthalmology, and Gastroenterology. Throughout his course at FTW he has been followed by Cardiology and Ophthalmology. His visual acuity has decreased, and currently is 20/CF (Counting Fingers). In addition, during his time here, he complained of inguinal pain and found to have bilateral inguinal hernias for which the General Surgeon recommended surgery if he got Cardiology Clearance. He was seen by Cardiology in April of 2019 and at the time was deemed to be stable, and was cleared to have the inguinal hernia repair surgery. Less than a month ago he was evaluated in the clinic due to complaints from his housing unit officer about Mr. Ebbers wandering around the unit appearing confused. A mental health evaluation followed and there were no concerns for any significant cognitive deficits. He is pending to be re-evaluated by Cardiology and will continue to have Ophthalmology services while still in our custody. At present surgical clearance has been withdrawn for the inguinal hernia repair until he a full work up for anemia has been completed. Currently he is able to ambulate from his housing unit without any assistance as he is able to follow the sidewalks without much problem. He is also employed as an orderly in his unit, which is a job he says is not difficult for him to perform.
<b>CURRENT CONDITION</b>
Mr. Ebbers does have a medical condition that is progressive and incurable; most notably the Macular Degeneration. There is no treatment that will allow him to recover his vision, and preserving his vision is unlikely. The BOP has inmates that are totally blind (no light perception) and they are able to function perfectly well within a prison setting. As Mr. Ebbers condition worsens, we should be able to make accommodations to house him in a safer environment and provide him with assistive devices and/or companions to facilitate independent completion of all his ADL's. He also has ischemic cardiomyopathy with a low ejection fraction. So far this condition has been managed medically and Cardiology has found him to be stable. While it is true that this condition predisposes a person to sudden cardiac death, his condition is no worse than many other inmates that are currently at FTW. At this time there is no data that leads to giving a life expectancy that is less than 12-18 months.
<b>PROGNOSIS</b>
Mr. Ebbers condition is stable. Historically his parents died when they were in their 90's, and using the Seattle Heart Failure Model for life expectancy, he still scores with a life expectancy of 5 years or more.
<b>SECTION II: ELDERLY WITH MEDICAL CONDITION</b>
Does the inmate suffer from a chronic or serious medical condition related to the aging process or is experiencing deteriorating physical (or mental) health that substantially diminishes his/her ability to function in a correctional facility?
YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
Can the BOP provide conventional treatment that can substantially improve the inmate's mental or physical condition?
YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>

Are there functional or cognitive limitations evidenced by the inmate's inability to perform instrumental activities of daily living (IADL)? (See OPI: HSD/HPB Number: 002-2015)

YES  NO

**SECTION III: MEDICAL(TERMINAL OR DEBILITATED)**

Has the inmate been diagnosed with a terminal, incurable disease and whose life expectancy is eighteen (18) months or less?

YES  NO

If yes, what is the current life expectancy? Enter Life Expectancy

Does the inmate have an incurable, progressive illness (or)  
Has the inmate suffered a debilitating injury from which he/she will not recover?

YES  NO

AND, is the inmate completely disabled, unable to perform activities of daily living and totally confined to a bed or chair OR Is the inmate only capable of limited self-care and confined to a bed or chair more than 50% of waking hours?

YES  NO

SIGNATURE



Sergio Mercado Jr., MD  
Medical Officer  
FMC Fort Worth  
Federal Bureau of Prisons