



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

May 30, 2018

CERTIFIED MAIL/RETURN RECEIPT

Robert Herel
Cobble Hill Health Center
380 Henry Street
Brooklyn, New York 11201

[REDACTED] Appellant
Cobble Hill Health Center
380 Henry Street
Brooklyn, New York 11201

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: cac
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

COBBLE HILL HEALTH CENTER

Respondent,

to discharge him from a residential health
care facility.

COPY

DECISION

Hearing Before:

Matthew C. Hall
Administrative Law Judge

Held at:

Cobble Hill Health Center
380 Henry Street
Brooklyn, New York 11201

Hearing Date:

May 8, 2018

Parties:

Cobble Hill Health Center

[REDACTED]

Pro Se

JURISDICTION

By notice dated [REDACTED] 2018, Cobble Hill Health Center (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(h).

HEARING RECORD

ALJ Exhibits: 1 - Notice of Hearing and attached Facility Discharge Notice

Facility Exhibits: 1 - Resident C.N.A. Documentation Record
2 - Progress Notes ([REDACTED] 18 and [REDACTED] 18)
3 - Physician's Orders
4 - Progress Notes ([REDACTED] 18)
5 - Progress Notes ([REDACTED] 18)

Appellant's Exhibits: 1 - Letter from Facility resident

Facility Witnesses: Robert Herel - Director of Social Work
Menucha Ackerman - R.N., Director of Nursing
Lewiz Attaalla - Physical Therapy (Rehab)

Appellant's Witness: 1 - Appellant Testified on his own behalf

ISSUES

Has Cobble Hill Health Center established that the determination to discharge [REDACTED] (the Appellant) is correct and that its discharge plan is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony ("T") of witnesses and exhibits ("Ex") found persuasive in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of cited evidence.

1. The Appellant is a [REDACTED] year-old man who was admitted to the Facility on [REDACTED] 2013. (Ex 3).

2. He was admitted for [REDACTED] term rehabilitation with a diagnosis of [REDACTED] (Ex 3).

3. By notice dated [REDACTED] 2018, the Facility determined to discharge the Appellant on [REDACTED] 2018 because his "health improved sufficiently so that the Resident no longer needs the services provided by the facility." (ALJ #1).

4. The Facility determined to discharge the Appellant to the [REDACTED] Shelter, a [REDACTED] shelter located at [REDACTED]

5. Upon admission to the Facility, the Appellant required rehabilitation to recover from his [REDACTED]. However, at the time of this hearing, the Appellant no longer needed skilled nursing care. He required no rehabilitation, wound care, or any other services offered specifically by a skill nursing facility that would not be otherwise available in the community or at an assisted living facility. (T Herel).

6. The Appellant could benefit from the services provided by such an assisted living facility. However, he is capable of caring for himself at a [REDACTED] shelter if necessary. He is independent, goes out on his own, and makes his own decisions. (T Ackerman).

7. The Facility's staff has made several attempts to help the Appellant find an appropriate living situation at either an assisted living facility or an adult home, but the Appellant has been uncooperative with the Facility's efforts at every turn. The Facility's Director of Social Work, Robert Herel set up appointments for the Appellant to talk to coordinators of [REDACTED] Assisted Living, [REDACTED] Adult Care Center. When the Admission's coordinators came to speak with the Appellant, he expressed [REDACTED] toward them and terminated the interviews. (ALJ #1, T Herel).

8. On [REDACTED] 2018, less than two weeks prior to this hearing, the Appellant agreed to visit [REDACTED] Assisted Living for an interview, but on the day of the scheduled interview, the Appellant changed his mind and refused to go. (ALJ #1).

9. It is the professional opinion of Appellant's caregivers at the Facility, including the Facility's Attending Physician, that discharge to the community, including a Shelter, is appropriate for Appellant. (T. Herel, Ackerman).

10. The Appellant remains at Cobble Hill Health Center pending the outcome of this appeal.

APPLICABLE LAW

A residential health care facility (also referred to in the Department of Health Rules and Regulations as a nursing home) is a facility which provides regular nursing, medical, rehabilitative, and professional services to residents who do not require hospitalization. Public Health Law §§ 2801(2)(3); 10 NYCRR § 415.2(k).

A resident may only be discharged pursuant to specific provisions of the Department of Health Rules and Regulations (10 NYCRR 415.3[h][1]).

The Facility alleged that the Resident's discharge is permissible pursuant to 10 NYCRR § 415(h)(1)(i)(a)(2), which states:

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.

Under the hearing procedures at Title 10 NYCRR §415.3(h)(2)(ii), the Facility bears the burden to prove a discharge necessary and appropriate. Under the New York State Administrative Procedures Act (SAPA) § 306(1), a decision in an administrative proceeding must be in accordance with substantial evidence. Substantial evidence means such relevant proof as a reasonable mind may accept as adequate to support conclusion or fact; less than preponderance of evidence, but more than mere surmise, conjecture or speculation and constituting a rational basis for decision, Stoker v. Tarantino, 101 A.D.2d 651, 475 N.Y.S.2d 562 (3rd Dept. 1984), appeal dismissed 63 N.Y.2d 649.

DISCUSSION

Reason for Discharge

Regarding whether the resident's health improved sufficiently and the resident no longer require(s) the services of a skilled nursing facility:

The Appellant was admitted to the Facility on [REDACTED] 2013, with diagnoses including [REDACTED]. Despite a confused and disorganized presentation by the Facility, enough evidence could eventually be gleaned from the record to determine that the Facility did, in fact, have good reason to discharge the Appellant. The D.O.N. testified that the Appellant had no medical needs that would require the attention of a skilled nursing facility. The Appellant required no wound care and was not in need of rehabilitation therapy of any sort. The Appellant is independent, makes his own decisions and often leaves the Facility on his own. (T Ackerman). The Appellant routinely refuses help from the Facility with walking and rehabilitation. (Ex 1). The Appellant is independent with toileting, clothing management and hygiene. Indeed, when asked what he needed from the Facility, the Appellant testified, [REDACTED] " (T Appellant).

Herel admitted during testimony that the Appellant could benefit from the services of an assisted living facility and that he would prefer the Appellant to go to one. (T Herel). The Appellant could certainly use some assistance, especially with bathing. Beyond that, however, the Appellant can care for himself and does not require the full services of a skilled nursing facility.

Accordingly, the Facility has proven that its determination to discharge the Appellant is correct.

Discharge Location

As discussed above, the Appellant has been uncooperative with the Facility at almost every turn, including its attempts to find him a suitable discharge location. Herel and other social workers at the Facility have made several attempts to find the Appellant a home in an assisted living facility. Herel testified that the Facility "would prefer" to discharge the Appellant to an assisted living facility. He set up appointments for the Appellant to talk to coordinators of [REDACTED] Assisted Living, [REDACTED] [REDACTED] Adult Care Center. When the Admission's coordinators came to speak with the Appellant, he expressed hostility toward them and terminated the interviews. (ALJ #1, T Herel, Ackerman). On [REDACTED] 2018, the Appellant agreed to visit [REDACTED] Assisted Living for an interview, but on the day of the scheduled interview, the Appellant changed his mind and refused to go. (ALJ #1). It is understandable that the Appellant has no desire to leave what has been his home since 2013. However, he no longer requires the skilled nursing care provided by the Facility and discharge is appropriate.

The Facility has done its best to find the Appellant a suitable living situation that would be more desirable and comfortable for the Appellant than a [REDACTED] shelter. An assisted living facility could help the Appellant with his bathing rituals and assist him with his mobility throughout a new facility. The Appellant, however, has been recalcitrant in his position that he will not consider moving to an assisted living home.

Pursuant to 18 NYCRR § 494.4(c)(5), assisted living is for a person who voluntarily chooses to participate in an assisted living program after being provided with sufficient information to make an informed choice. As the Appellant has strongly opposed any efforts to be placed in an assisted living facility, the Facility is left with no choice but to discharge him to a [REDACTED] shelter.

Accordingly, the Facility has proven that its determination to discharge the Appellant to a [REDACTED] shelter is appropriate.

CONCLUSION

The Facility has proven that the Appellant is no longer in need of skilled nursing care and is therefore an appropriate candidate for discharge. The Appellant contended that he should not be discharged at all and would like to remain at the Facility. The record reflects that the Appellant could benefit from placement


in an assisted living facility, but has failed to cooperate with the Facility's efforts to secure such a residence for him, making a [REDACTED] shelter the only remaining option. The Appellant is encouraged to accept the Facility's assistance in pursuing other living arrangements.

DECISION

Cobble Hill Health Center has established that its determination to discharge the Appellant was correct, and that transfer to a [REDACTED] shelter is appropriate.

1. Cobble Hill Health Center is authorized to discharge the Appellant in accordance with its discharge plan on or after June 8, 2018.
2. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Law and Rules.

DATED: Albany, New York
May 29, 2018


MATTHEW C. HALL
Administrative Law Judge