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# Department of Health

**ANDREW M. CUOMO**  
Governor

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

**LISA J. PINO, M.A., J.D.**  
Executive Deputy Commissioner

October 14, 2020

**CERTIFIED MAIL/RETURN RECEIPT**

██████████  
c/o Cobble Hill Health Center  
380 Henry Street  
Brooklyn, New York 11201

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

**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

-----X

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. :

-----X

COPY

DECISION

Hearing Before: Sean D. O'Brien  
Administrative Law Judge

Held via WEB EX

Hearing Date: October 8, 2020

Parties: COBBLE HILL HEALTH CENTER

By: Ms. [REDACTED], MSW  
Social Worker

[REDACTED]  
Pro Se

JURISDICTION

By notice dated [REDACTED] 2020, Cobble Hill Health Center (the Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge/transfer [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) Section 415.3(i).

HEARING RECORD

Facility Exhibits: 1-5

Facility Witnesses: Menucha Ackerman, RN, Nursing Supervisor  
Lewiz Attaalla, Director of Rehabilitation  
Shoa Zaidi, MD, Medical Director  
[REDACTED] MSW, Social Worker

Appellant's Witnesses: [REDACTED] [REDACTED]

Appellant's Exhibits: A-B

Administrative Law Judge Exhibit 1: Notice of Hearing with Discharge Notice

A digital recording of the hearing was made part of the hearing record via WEB EX.

ISSUE

Has the Facility established that the determination to transfer/discharge is correct and the discharge plan for the Appellant is appropriate?

FINDINGS OF FACT

Citations in parentheses refer to testimony (T.) of witnesses and exhibits (Exhibit) 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 male who was admitted to the Facility on [REDACTED] [REDACTED] 2019, for a short-term rehabilitation following a fall. His diagnoses include [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Exhibits 1, 2, 4, T. [REDACTED] 4:33, T. Ackerman 26:49, T. Zaidi 44:35, 46:15).

2. By notice dated [REDACTED] [REDACTED] 2020, the Facility determined to discharge the Appellant on [REDACTED] [REDACTED] 2020, because his "...health has improved sufficiently..." so that he no longer needs the services of a skilled nursing facility.

(Exhibits 1, 2, 3, 4, 5; T. Allan 4:47, T. Zaidi 44:53, T. Attaalla 38:56, T. Ackerman 27:08).

3. The Facility determined to discharge the Appellant to the Assisted Living Facility (ALF) [REDACTED] at the [REDACTED] [REDACTED] where he has been accepted. (Exhibits 2, 3, 4, 5; T. [REDACTED] 4:48).

4. At the time of his admission to the Facility, the Appellant needed assistance in all of his Activities of Daily Living (ADLs) including ambulating, transferring and bathing. The goal of Appellant's short-term admission was to return the Appellant to the community. (Exhibits 1, 2, 3, 4, T. [REDACTED] 6:06, T. Attaalla 37:50, T. Zaidi, 44:52, T. Ackerman 27:11).

5. The Appellant has completed his short-term rehabilitation to the point where he no longer needs skilled nursing care, nor does he need assistance with his ADLs. (Exhibits 2, 3, 4, 5; T. [REDACTED] 9:25, T. Attaalla 37:57, T. Zaidi 44:52, T. Ackerman 27:08).

6. The Appellant can take his own medications, self-direct and is capable of making his own medical appointments. (Exhibits 2, 3, 4, A; T. [REDACTED] 9:38, T. Ackerman, 27:49, T. Zaidi 44:48).

7. The Appellant can ambulate independently with a roller walker without supervision when he chooses to do so. (Exhibits 2, 3, 4, 5; T. [REDACTED] 9:25, T. Attaalla 38:02, 39:52, T. Zaidi 46:15, T. Ackerman 27:15, 28:26).

8. The Appellant was previously referred to the [REDACTED] Shelter system. The Appellant does not have any income and it is difficult to find placement for him at an adult home or an assisted living location. (Exhibits 2, B; T. [REDACTED] T. 5:28, 51:24).

9. It is the professional opinion of the Appellant's caregivers at the Facility, including the Facility's Medical Director, Attending Physician, Social Worker, Nursing Supervisor and the Facility's Director of Rehabilitation that discharge to [REDACTED] is appropriate. (Exhibits 1, 2, 3, 4, 5; T. [REDACTED] 4:55, 51:24, T. Ackerman 27:49, T. Attaalla 38:56, T. Zaidi 44:52).

10. The Appellant remains at the Facility pending the outcome of the 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 Sections 2801(2)(3); 10 NYCRR Section 415.2(k).

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

The Facility alleges the Appellant's discharge is permissible pursuant to 10 NYCRR Section 415.3(i)(1)(i)(a)(2), which states in relevant part:

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 10 NYCRR Section §415.3(i)(2)(ii), the Facility bears the burden to prove a discharge necessary and the discharge plan is appropriate. Under



the New York State Administrative Procedures Act (SAPA) Section 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 (3<sup>rd</sup> Dept. 1984), appeal dismissed 63 N.Y.2d 649.

#### DISCUSSION

The Appellant was admitted to the Facility on [REDACTED], 2019, for short-term rehabilitation following a fall which caused the Appellant to suffer a [REDACTED]. At the time of his admission to the Facility, the Appellant required assistance with the ADLs of ambulating, transferring and bathing. (Exhibits 1, 2, 3, 4; T. [REDACTED] 4:30, T. Ackerman 26:46, T. Attaalla 37:53).

By [REDACTED], 2020, the Appellant had made sufficient improvements in all ADLs areas and had no need for skilled nursing care at the facility. The Facility's Director of Rehabilitation, Ms. Lewiz Attaalla and Ms. Menucha Ackerman, RN, Nursing Director

both testified the Appellant has hit all the benchmarks for his physical and occupational therapy. Ms. Attaalla further testified the Appellant can ambulate with a roller walker without supervision. (Exhibits 1, 2, 3, 4; T Ackerman 27:11, T. Attaalla 39:30).

Ms. [REDACTED] [REDACTED] the resident's social worker at the Facility testified the Appellant is being discharged back to the community and in particular [REDACTED]. (Exhibits 2, 4, 5; T. [REDACTED] 4:55, 51:24).

Importantly, Dr. Shoa Zaidi, the Medical Director at the Facility testified the Appellant does not require nursing home placement and can be discharged to [REDACTED]. In addition, the attending physician of the Appellant, Dr. Ogunfowora Olusegun, in his medical memo wrote the Appellant does not require the level of medical care of a nursing home. The Appellant testified on his own behalf and made it known he does not want to be discharged because he claims that he is not ready with his ADLs and suffers from [REDACTED] pain, but he did not provide any meaningful medical justification to support his position that he must remain in the Facility. Therefore, the Facility has met its burden of establishing valid grounds the discharge of the Appellant is

necessary because the Appellant no longer needs nursing home care.  
10 NYCRR Section 415.3(i)(1)(i)(b).

The discharge plan to the community and to [REDACTED], in particular, is appropriate. The Appellant does not wish to go to [REDACTED] [REDACTED] because he will have to share a room, but he currently shares a room at the Facility without complaint. The Appellant is able to make medical appointments outside of the Facility and is alert, oriented and can ambulate independently. (Exhibits 2,3,4). The discharge plan addresses the medical needs and personal care needs of the Appellant post discharge. 10 NYCRR Section 415.3(i)(1)(vi).

At [REDACTED] a social worker will be assigned to the Appellant to assist him regarding housing, meals and medications including the pain medication for his [REDACTED]. The Facility will issue Appellant a roller walker, as durable medical equipment. In addition, the Appellant's scripts and necessary medical referrals will be made. The health care the Appellant may still require can be provided on an outpatient basis and does not require nursing home placement. (Exhibits 2, 3, 4; T. [REDACTED] 12:30, T. Ackerman 27:15, 27:49, T. Zaidi 44:49, 45:25.).

The Facility has adequately planned for the Appellant's discharge. The Facility actions sufficiently address the medical needs of the Appellant post discharge. 10 NYCRR Section 415.3(i)(1)(vi).

CONCLUSION

The Cobble Hill Health Center has proven that its determination to discharge the Appellant is correct and the discharge plan is appropriate.

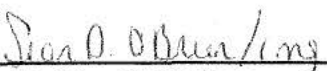
DECISION

The appeal by Appellant is therefore DENIED.

The Facility is authorized to discharge Appellant in accordance [REDACTED], 2020 Discharge Notice.

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: Albany, New York  
October 14, 2020

  
\_\_\_\_\_  
Sean D. O'Brien  
Administrative Law Judge

To: Mr. [REDACTED] [REDACTED]  
c/o Cobble Hill Heath Center  
380 Henry Street  
Brooklyn, New York 11201

Ms. [REDACTED] [REDACTED] MSW,  
Social Worker  
Cobble Hill Health Center  
380 Henry Street  
Brooklyn, New York 11201