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# Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Commissioner

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

July 26, 2023

## CERTIFIED MAIL/RETURN RECEIPT

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

Stephanie Zevon, DSW  
Cobble Hill Health Center, Inc.  
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,

*Natalie J. Bordeaux /ny*

Natalie J. Bordeaux  
Chief Administrative Law Judge  
Bureau of Adjudication

NJB: cmg  
Enclosure

**STATE OF NEW YORK  
DEPARTMENT OF HEALTH**

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

██████████

Appellant,

from a determination by

**Cobble Hill Health Center Inc.,**

Respondent,

to discharge Appellant from a residential health care facility.

**DECISION**

**COPY**

Before: Rayanne L. Babich  
Administrative Law Judge (ALJ)

Date: July 10, 2023

Held at: New York State Department of Health  
Webex videoconference

Parties: ██████████, Appellant  
c/o Cobble Hill Health Center, Inc.  
380 Henry Street  
Brooklyn, New York 11201  
Pro se

Cobble Hill Health Center, Inc.  
380 Henry Street  
Brooklyn, New York 11201  
By: Stephanie Zevon, Director of Social Work

**JURISDICTION**

By notice dated ██████████, 2023, Cobble Hill Health Center, Inc., a residential health care facility (Facility), determined to discharge ██████████ (Appellant), from care in its Facility.

The Appellant appealed the proposed discharge on June 29, 2023.

RECORD

- ALJ Exhibits [Ex]: I – Notice of Hearing, July 6, 2023  
II – Notice of Discharge, [REDACTED], 2023  
III – Admission Record
- Facility Exhibits: 1 – Physician Progress Notes, [REDACTED] through [REDACTED] 2023  
2 – Nursing Progress Notes, [REDACTED], 2022 through [REDACTED], 2023  
3 – Physical Therapy Progress Note, [REDACTED] 2023  
4 – Social Work Progress Notes, [REDACTED] through [REDACTED] 2023
- Appellant Exhibit: A – Physician Letter, Robert Kim, M.D., [REDACTED] 2023  
B – Report of Consultation, [REDACTED], 2023  
C – Laboratory Results, [REDACTED] through [REDACTED] 2023  
D – Physician’s Orders, [REDACTED] 2023  
E – Physician Letter, Manisha Balwani, M.D., [REDACTED] 2023
- Facility Witnesses: Stephanie Zevon, Director of Social Work  
Julianah Atunbi, Nurse Manager  
Olusegun Ogunfowora, M.D., Attending Physician
- Appellant Witness: [REDACTED]

The hearing was digitally recorded. [R. 2:09:20.]

SUMMARY OF FACTS

1. The Appellant was admitted to the Facility on [REDACTED], 2018 for long-term care because he was unable to care for himself. The Appellant is diagnosed with [REDACTED], a [REDACTED] characterized by [REDACTED] and [REDACTED] and [REDACTED]. [Ex III, E; R. 39:51, 43:38, 1:25:15.]
2. The Appellant ambulates with crutches, and uses a manual wheelchair as needed. He is independent in his activities of daily living. [R. 37:08, 1:00:09.]
3. On [REDACTED], 2023, Facility physician, Olusegun Ogunfowora, M.D., documented in the Appellant’s medical record that the Appellant is medically stable for discharge to

community living. The Appellant will resume routine medical care with his established medical providers in the community. [Ex 1; R. 38:44.]

4. On [REDACTED] 2023, the Facility issued a Notice of Discharge to the Appellant which stated that "the resident's health has improved sufficiently so that the Resident no longer needs the services provided by the facility." [Ex II.]
5. The Facility has proposed to discharge an assisted living facility (ALF), known as [REDACTED].  
The ALF has accepted the Appellant and has a bed available. [Ex 4; R. 1:13:45.]
6. The Appellant remains at the Facility pending the outcome of the hearing.

#### ISSUES

Has the Facility met its burden of proving that the discharge is necessary and that the discharge plan is appropriate?

#### APPLICABLE LAW

1. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(i), which provides, in pertinent part:
  - (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:

(2) 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.

2. Before discharging a resident, a residential health care facility shall 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. 10 NYCRR 415.3(i)(1)(vi).
3. The Facility has the burden of proving that the “discharge or transfer is/was necessary and the discharge plan appropriate.” 10 NYCRR 415.3(i)(2)(iii)(b).

#### DISCUSSION

The Facility is seeking to discharge the Appellant because his health has improved so that he no longer requires the services provided by the Facility. [Ex II.] The Facility determined that the Appellant's condition has improved since he was admitted in 2018. He ambulates independently with crutches or a manual wheelchair, and he is independent in his activities of daily living. [R. 34:03.] The Appellant objected to the discharge because he believes that he requires the daily monitoring provided by the Facility and the care the Facility provides is of the best quality that he is unable to find elsewhere. [R. 1:55:48.]

The Appellant's physician at the Facility, Olusegun Ogunfowora, M.D., has determined that the Appellant is appropriate for discharge. Dr. Ogunfowora has treated the Appellant for approximately five years and testified that his health has significantly improved, and he is medically stable for discharge to the community. [R. 32:38, 36:44, 57:04.] He also explained that although the Appellant [REDACTED] is chronic and will progress over time, medical care for the Appellant's condition can be provided in the community. [R. 39:51.] Currently, all

of the Appellant's care for [REDACTED], including a [REDACTED] specialty care, [REDACTED] treatments, are already provided in the community. [Ex A, E; R. 38:44, 40:14.] Dr. Ogunfowora testified that the Appellant receives daily vital sign monitoring as part of the routine care the Facility provides to all residents. [R. 48:36.]

The Appellant successfully completed physical therapy and met his treatment goals. A physical therapy screening on [REDACTED] 2023, which was documented in the clinical record by Jihyun Hwang, Physical Therapist, showed that the Appellant remains independent with bed mobility and transfers. [Ex 3.]

Nurse Manager, Julianah Atunbi, testified that she has been familiar with the Appellant since he was placed on her floor in 2019. [R. 59:25.] Ms. Atunbi has observed the Appellant ambulate well with his crutches and attend to his activities of daily living independently. [R. 1:00:49.] She also testified that the Appellant is "very independent," as he manages his medical care and appointments and can self-administer his medications. [R. 1:01:05, 1:02:23.]

In his objection to the discharge from the Facility, the Appellant relied on the [REDACTED] 2023 letters from his community physicians that he is better suited in a nursing home due to his medical conditions and for continuity of care. [Ex A, E.] However, the evidence showed that other than routine medications and vital sign checks, the Appellant's care for his medical conditions occurs in locations outside of the Facility.

The Appellant also objected to the discharge because he receives the best care at the Facility and will not receive the same quality elsewhere. [R. 1:52:51.] Although the Appellant has been pleased with the care provided by the Facility, it is not a sufficient reason to remain at the Facility when he no longer requires the types of service it provides.

The Facility has proposed to discharge the Appellant to [REDACTED] an ALF in [REDACTED] New York. [Ex II.] Director of Social Work, Stephanie Zevon, testified that the interdisciplinary treatment team at the Facility determined in [REDACTED] 2023 that the Appellant is appropriate for an ALF. [R. 1:15:19.] The treatment team found that the Appellant is independent but would benefit from having staff and medical providers to rely on when needed. [R. 1:18:42.] The Appellant objected to the discharge because it will not provide the same quality of care he receives from the Facility, and it does not have the staff to check his blood pressure on the weekends. [R. 1:00:42.]

Ms. Zevon testified that she began working with the Appellant in [REDACTED] 2023 to plan for his discharge and that he was originally willing to consider an ALF. [R. 1:09:56.] In her opinion, an ALF is the best environment for the Appellant because it will allow him to maintain as much independence as possible while still having nursing aides to assist with other needs such as laundry, housekeeping, and meal preparation [R. 1:16:34.] She explained that she and the Appellant narrowed down a list of ALF locations and settled on [REDACTED], which has accepted the Appellant and has a bed available for him. [R. 1:11:25.] However, the Appellant has refused to accept his place at the ALF.

The Appellant argued that the ALF is not an appropriate setting for him because nursing staff will not be present seven days a week. [R. 1:52:24.] However, Ms. Zevon testified that the ALF is required to have staff available every day of the week including certified nursing assistants, the same type of staff available on the weekends at the Facility, who will assess the Appellant every day. [R. 1:56:04.] The ALF is an appropriate discharge. It will meet his medical needs and has staff that can provide support as needed.




The Facility has met its burden to prove that the discharge is necessary and that the proposed discharge location is appropriate.

**ORDER**

Cobble Hill Health Center, Inc. has met its burden to prove that its determination to discharge the Appellant is necessary, and that discharge to [REDACTED] at [REDACTED], New York is appropriate.

1. The Facility is authorized to discharge the Appellant pursuant to the Notice of Discharge dated [REDACTED] 2023.
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: July 26, 2023  
Albany, New York

  
Rayanne L. Babich  
Administrative Law Judge

TO:

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

Stephanie Zevon, Director of Social Work  
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