



**Department
of Health**

ANDREW M. CUOMO
Governor

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

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

October 15, 2019

CERTIFIED MAIL/RETURN RECEIPT

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

[REDACTED]
c/o 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: cmg
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 her from a residential health
facility

ORIGINAL

DECISION

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A Notice of Transfer/Discharge, dated [REDACTED] 2019, was issued to [REDACTED] (Appellant), by Cobble Hill Health Center (Facility). The Appellant appealed the Facility's proposed discharge. On [REDACTED] 2019, a hearing on the appeal was held before Dawn MacKillop-Soller, Administrative Law Judge, at Cobble Hill Health Center, located at 380 Henry Street, Brooklyn, New York. Evidence was received (ALJ I and Facility 1-3). An audio recording of the proceeding was made.

The Appellant was present at the hearing and represented herself. The Facility was represented by Robert Herel, Director of Social Work. Shoa Zaidi, M.D., Medical Director, Louise Attaalla, Director of Rehabilitation, Laura Mason, nurse manager, Natasha Mahase, social worker and Mr. Herel testified on behalf of the Facility. The Appellant testified on her own behalf.

Issues

Has the Facility proven by substantial evidence that the Appellant's health has improved sufficiently so that she no longer needs skilled nursing care services and that its discharge plan is appropriate?

Findings of Fact

1. The Appellant, age [REDACTED] was transferred to the Facility from [REDACTED] on [REDACTED] 2019 for short-term physical therapy for [REDACTED] pain and to improve her mobility. On [REDACTED] 2019, she was discharged from rehabilitative services. Her medical conditions include [REDACTED] [REDACTED] [REDACTED] [REDACTED]. She uses a [REDACTED] and occasionally, a [REDACTED] to maintain her [REDACTED] [Exhibit 1; Recording @ 5:30, 13:07, 13:46, 15:16, 24:29, 43:00.]

2. The Appellant prefers to use a cane for ambulation but is without medical restrictions for walking, using stairs and weight bearing. She freely ambulates inside and outside the Facility using a cane and can manage her medications. [Recording @ 5:48-5:53, 8:01, 26:05, 26:15, 29:56].

3. The Facility's proposed discharge plan is to the [REDACTED] [REDACTED] [REDACTED], located at [REDACTED] [REDACTED] [REDACTED], [REDACTED]. The Appellant does not require skilled nursing care from medical staff, yet she is desirous of staying at the Facility due to her complaints of pain, toileting challenges and possible need for future [REDACTED] surgery. [Recording @ 4:09, 6:30.]

4. The Appellant's care team at the Facility and the Facility's physician, Amer Rafiaa, M.D., and Medical Director, Shoa Zaidi, M.D., agree that discharge to the [REDACTED] Shelter is safe and appropriate. Dr. Zaidi testified to her opinion based on observations of the Appellant, a review of the clinical record and discussions with Facility staff. [Recording 10:30, 37:54.]

Applicable Law

1. Transfer and discharge rights of nursing home residents are set forth in 10 NYCRR 415.3(h). It 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:

(1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met after reasonable attempts at accommodation in the facility;

(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. The Facility has the burden of proving that the transfer is necessary and the discharge plan is appropriate. 10 NYCRR 415.3(h)(2)(iii).

Discussion

The Facility proved by substantial evidence that the Appellant's health has improved sufficiently so she no longer needs skilled nursing care services and that its discharge plan to transfer the Appellant to [REDACTED] Shelter is appropriate. The Appellant has reached her rehabilitation goals and maximum level of improvement and is capable of independently managing her medications and activities of daily living. The Facility's physician and the interdisciplinary care team agree she no longer requires skilled nursing care. [Exhibits I and 1; Recording @ 10:30, 37:54.]

The Appellant opposes the discharge on the ground that she requires the Facility's skilled nursing services for a [REDACTED] surgery sometime in the future, [REDACTED] pain and toileting challenges. Laura Mason, nurse manager, confirmed, however, that the Appellant requires no treatment and is capable of toileting without assistance. She also described the Appellant's independence with self-care, including regularly travelling outside the Facility to shop and attend medical appointments with outside providers. Louise Attaalla, Director of Rehabilitation, described the Appellant as

independent with activities of daily living, including bathing, toileting and bed transfers. Although the Appellant chooses to use a cane, she is capable of independently walking and using car service for her off-site medical appointments. [Exhibit 1; Recording 8:58, 9:16, 9:33, 11:09, 26:15, 27:03, 29:10, 29:19.]

The Appellant's unsubstantiated complaints of pain and claims that a future [REDACTED] surgery may be required are not reasons to justify skilled nursing care. Her concerns that shelter workers will not "[REDACTED] her after toileting or provide her with a "cup of water" also fail to warrant such care. She attempts to claim that nursing assistance is needed to maintain her [REDACTED], but Shoa Zaidi, M.D., Medical Director, and Ms. Mason explained that the condition is manageable by taking [REDACTED] an [REDACTED] medication. Although the Appellant persistently refuses to cooperate with the Facility's efforts to complete an [REDACTED] test to determine the dosage requirements to prescribe this drug, the evidence confirmed that her [REDACTED] is treatable by taking a form of this drug, [REDACTED] which has already been prescribed by one of her outside providers. [Exhibit I and 1; Recording @ 3:35-3:46, 13:07, 13:36, 15:59, 19:29, 23:15, 40:39, 41:17, 41:29-42:11.]

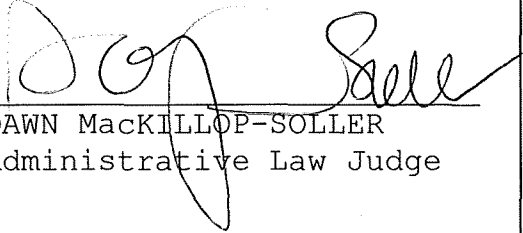
I find the Facility's determination to discharge the Appellant appropriate because the Facility has proven by substantial evidence that the Appellant's condition has improved sufficiently so that she no longer needs skilled nursing services. I also find the

discharge plan to transfer her to [REDACTED] Shelter appropriate. Her care team agree that her needs, which are uncomplicated and without significant mobility challenges, can be satisfied at [REDACTED] Shelter. The Appellant may consent to her discharge to an alternate location if she is a suitable candidate and placement is available; however, the Facility is authorized to transfer the Appellant to the [REDACTED] Shelter in accordance with its discharge plan on or after [REDACTED] 2019.

Order

1. The Facility is authorized to discharge the Appellant to [REDACTED] Shelter on or after Friday, [REDACTED] 2019; and
2. This Order shall be effective upon service on the Petitioner by personal service or by registered or certified mail as required under PHL 12-a(4).

Dated: Albany, New York
October 15, 2019


DAWN MacKILLOP-SOLLER
Administrative Law Judge

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

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