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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

August 24, 2020

## CERTIFIED MAIL/RETURN RECEIPT

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

Mr. Robert Herel, LCSW  
Director of Social Work  
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

-----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:

August 18, 2020

Parties:

COBBLE HILL HEALTH CENTER  
By: Mr. Robert Herel, LCSW  
Director of Social Services

[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: 1-6

Facility Witnesses: Laura Mason, RN, Nursing Supervisor  
Lewiz Attalia, Director of Rehabilitation  
Shoa Zaidi, MD, Medical Director

Appellant's Witnesses: [REDACTED]  
Natasha Mahase, MSW, Social Worker

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] 2020, for a short-term rehabilitation following [REDACTED] surgery. His other diagnoses include [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Exhibits 1, 2, 4, 5; T. Mason 11:58, T. Zaidi 20:20).

2. By notice dated [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, 6; T. Mason 9:38, T. Zaidi 18:40, T. Attalia 12:26, T. Mahase 45:23).

3. The Facility determined to discharge the Appellant to the [REDACTED] shelter system at the [REDACTED] Shelter [REDACTED] New York where he has been accepted. (Exhibits 2, 3, 6; T. Mahase 14:25).

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, 5; T. Mason 11:50, T. Attalia 12:18, T. Zaidi, 20:20, T. Mahase 46:14).

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. Mason 9:25, T. Attalia 12:26, T. Zaidi 18:40, T. Mahase).

6. The Appellant can take his own medications, self-direct and is capable of making his own medical appointments. (Exhibits 2, 3, 4, 5, Appellant's Exhibit A; T. Mason, 9:38, T. Attalia, 16:56, T. Mahase 14:23).

7. The Appellant can ambulate independently with a roller walker without supervision. (Exhibits 2, 3, 4, 5; T. Mason 9:25, T. Attalia 16:00, T. Zaidi 19:11, T. Mahase 44:49).

8. The Appellant was referred to the [REDACTED] Shelter system where has lived previously. The Appellant does not have any income and is not eligible for an adult home stay or an assisted living location. (Exhibits 2, 6; T. Mahase 45:23).

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 the [REDACTED] Shelter system is appropriate. (Exhibits 2, 3, 4, 5, 6; T. Attalia 16:06, T. Mason 9:38, T. Zaidi 18:40, T. Mahase 45:23).

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] 2020, for short-term rehabilitation following [REDACTED] surgery. His medical conditions include [REDACTED]

[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, 5; T. Attalia 25:00, T. Mason 19:05, T. Zaidi 31:43, T. Mahase 46:14).

By [REDACTED] [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 Attalia and Ms. Laura Mason, RN, the Facility's Nursing supervisor both testified the Appellant has hit all the benchmarks for his physical and occupational therapy. Ms. Attalia further

testified the Appellant can ambulate with a roller walker without supervision. (Exhibits 2, 3, 4, 5; T. Attalia 16:00).

Ms. Natasha Mahase, the resident's social worker at the Facility testified the Appellant is being discharged back to the community and to the [REDACTED] shelter system program where the Appellant has lived previously. (Exhibits 2, 4, 5; T. Mahase 14:23).

Importantly, Dr. Shoa Zaidi, the Medical Director at the Facility testified the Appellant does not require nursing home placement and can be discharged to the [REDACTED] [REDACTED] [REDACTED] shelter system. In addition, the attending physician of the Appellant, Dr. Kala Sury, in her medical orders 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, 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 the [REDACTED] shelter system, in particular, is appropriate. The Appellant does not have any income and is not eligible for discharge to an assisted living location or an adult home. In addition, the Appellant is able to make medical appointments outside of the Facility and is alert, oriented and can ambulate independently. (Exhibit 2). Finally, the Appellant resided in the [REDACTED] shelter system prior to his admission to the hospital and nursing home. (Exhibit 2; T. Mahase 45:23). 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 the [REDACTED] shelter a social worker will be assigned to the Appellant to assist him regarding housing, meals and medications. 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. Mason 9:38, T. Zaidi 18:40 21:06, T. Mahase 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 with [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  
August 24, 2020



Sean D. O'Brien  
Administrative Law Judge

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

Mr. Robert Herel, LCSW,  
Director of Social Work  
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