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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

April 30, 2021

### 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

Eve Green Koopersmith, Esq.  
Garfunkel Wild, P.C.  
111 Great Neck Road  
Great Neck, New York 11021

**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**

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

■■■■ ■■■■

Appellant,

from a determination by

Cobble Hill Health Center

Respondent,

to discharge him from a residential health care facility.

**COPY**

DECISION

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

Dates: February 16, 2021, March 5, 2021 and March 25, 2021

Held at: Webex videoconference

Parties: ■■■■ ■■■■ Appellant  
c/o Cobble Hill Health Center  
380 Henry Street  
Brooklyn, New York 11201

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

JURISDICTION

An Amended Notice of Transfer/Discharge dated ■■■■, 2021, was served on ■■■■ ■■■■ (Appellant) by Cobble Hill Health Center (Facility). 10 NYCRR 415.3(i)(1)(iii)(a). The Appellant appealed the proposed discharge. 10 NYCRR 415.3(i)(2). The hearing was

digitally recorded. (R1 2:03:40; R2 35:37; R3 3:03:33.) The Appellant appeared and represented himself at the hearing. The Facility was represented by Elisa Brown, Social Worker on February 16, 2021; Stephanie Zevon, Director of Social Work on March 5, 2021; and Eve Green Koopersmith, Esq. on the final hearing date.

### RECORD

ALJ Exhibits: I – Letter with Notice of Hearing  
II – Notice of Discharge dated [REDACTED], 2021  
III – Amended Notice of Discharge dated [REDACTED], 2021

Facility Exhibits: 1 – Social Work progress notes dated [REDACTED], 2021  
2 – Physical Therapy records  
3 – Physician Orders and Nursing progress note  
4 – Medical/Social Work letter dated [REDACTED], 2021  
5 – Social Work progress notes dated [REDACTED] – [REDACTED], 2021

Appellant Exhibits: None

Facility Witnesses: Stephanie Zevon, Director of Social Work  
Menucha Ackerman, Director of Nursing  
Shoa Zaidi, Medical Director  
Lewiz Attaalla, Director of Rehabilitation Services

Appellant Witnesses: [REDACTED] [REDACTED]

### FINDINGS OF FACT

1. Cobble Hill Health Center is a residential health care facility. [Ex I, II.]
2. After a brief hospitalization, the Appellant, age [REDACTED] was admitted to the Facility on [REDACTED] 2020 for short term rehabilitation to improve his ambulation and basic dressing skills. [Ex 2, 4; R1@1:11:42, 1:12:52.]
3. The Appellant's current medical diagnoses include [REDACTED] [REDACTED], [REDACTED]. His medications

include [REDACTED]. [Ex 2, 3;

R@1:24:28.]

4. The Appellant was discharged from physical and occupational therapies on [REDACTED], 2020 and [REDACTED], 2021, respectively. [Ex 2; R1@57:31.]
5. The Appellant has met his treatment goals, is independent in his activities of daily living, capable of self-administering medications and managing his daily affairs. He can independently ambulate inside and outside the Facility with a [REDACTED] [REDACTED] as needed. [Ex 4; R1@1:12:00, 1:12:52, 1:13:04, R3@51:24, 1:14:42.]
6. The Appellant objected to the discharge and to the discharge plan on the grounds that he requires assistance to manage his [REDACTED] and [REDACTED], that he is not receiving care, and the discharge location does not meet his preference. [R3@1:30:39, 1:32:43.]
7. The Facility's Medical Director, Shoa Zaidi, M.D. and the Appellant's attending physicians, Mohammed Bashey, M.D. and Amer Rafiaa, M.D., have determined that the Appellant is not in need of nursing home care and that the Facility's discharge plan is appropriate. The physician's opinion is based on a review of the medical records and discussions with the medical team and Facility staff, and it is documented in the Appellant's clinical record. [Ex 4; R1@1:12:00, 1:13:13, R3@51:24, 1:14:42.]
8. The Facility's discharge plan is to transfer the Appellant to [REDACTED], an assisted living facility located at [REDACTED]. [Ex III.]

## ISSUE

Has the Facility met its burden of proving that the Appellant's health has improved sufficiently so he no longer needs skilled nursing care services and that its 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:

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. In planning for discharge, a facility must:

(vi) 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, and provide a discharge summary pursuant to section 415.11(d) of this Title; and

(vii) permit the resident, their legal representative or health care agent the opportunity to participate in deciding where the resident will reside after discharge from the facility.

10 NYCRR 415.3(i)(1)(vi)-(vii).

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 has proven by substantial evidence that the Appellant’s health has improved sufficiently so he no longer needs skilled nursing care and that its discharge plan to [REDACTED], an assisted living facility, is appropriate pursuant to 10 NYCRR 415.3(i).

#### Grounds for Transfer

The Appellant was admitted for rehabilitation services to address activities of daily living following a brief hospitalization for [REDACTED] and a work up for [REDACTED] [Ex 4; R1@1:24:42.] The Facility is seeking to discharge the Appellant because it determined he no longer requires the type of services it provides. [Ex II, III.] Nursing homes in New York State are critically needed to provide nursing care to sick, invalid, infirm, disabled or convalescent persons and must be made available for those who require this on-site, high level of continuous care. PHL §2801(2); 10 NYCRR 415.2(k).

Shoa Zaidi, M.D., the Medical Director at the Facility, testified that the Appellant independently attends to his activities of daily living, can administer his medications, and can manage his daily affairs. [R1@1:11:54, 1:12:52.] As documented in the medical record, Dr. Zaidi concurred with the medical team, consisting of Dr. Zaidi, Mohammed Bashey, M.D., and Amer Rafiaa, M.D., that the Appellant’s rehabilitation goals have been met and he no longer requires the services provided by the Facility. [Ex 1, 4; R1@1:26:27.] Further testimony from Menucha Ackerman, Director of Nursing, showed that while completing his activities of daily living independently, the Appellant has not asked for assistance from nursing staff.

[R1@1:40:17.] The Appellant is able to perform all activities of daily living for himself.

[R3@51:37.] Stephanie Zevon, Director of Social Work, testified that just prior to the hearing, the Appellant had made his own arrangements for transportation to attend to errands in the community and ensure some of his bills were paid. [R3@1:12:01.]

Lewiz Attaalla, Director of Rehabilitation Services, testified that physical and occupational therapies were provided to the Appellant, but were discontinued when he refused to continue his participation. [Ex 2; 56:42.] However, Ms. Attaalla also testified that since the time therapy services were discontinued, the Appellant has been observed, by medical and nursing staff, ambulating independently without assistive devices and providing his own self-care. [R1@1:02:05, 1:03:48.]

The Appellant raised various objections to the discharge on the grounds that he requires further assistance to manage his [REDACTED] and [REDACTED] and alleged that he was also suffering from a [REDACTED]" and at one time, "thought [he] was going to have a [REDACTED] [Ex 1; R1@1:22:53; R3@1:30:39, 1:32:43, 1:39:50.] The Appellant also alleged that he has serious and chronic diseases for which he is not receiving care. [R3@1:28:21.] None of these claims are supported by the medical evidence.

Dr. Zaidi testified that she and the entire medical team received medical documentation from the hospital when the Appellant was admitted to the Facility that outlined his physical status. [R1@1:21:44.] During his admission, the Appellant has been evaluated by Dr. Zaidi, Dr. Bashey and Dr. Raffiaa for routine care and each time the Appellant requested to be seen by a physician. [Ex 1; R1@1:23:38, R1@1:26:12.] During each visit, the medical team documented the care provided and that the Appellant's medical needs were addressed.



[R1@1:22:43.] The medical team concurred that all of the Appellant's diagnoses were stable and can be managed through outpatient care in the community as needed. [R1@1:26:27.]

#### Discharge Plan

A discharge plan must "[address] the medical needs of the resident and how these will be met after discharge." 10 NYCRR 415.3(i)(1)(vi). The Facility's social work staff made extensive efforts exploring placement options for the Appellant, who is without a home in the community. [Ex 1, 5; R3@52:22.] The Appellant objected to the discharge plan because the physical layout of the assisted living facility was not to his preference. [R3@1:05:29, 1:27:31.] The Appellant has refused to participate in the discharge planning process and has made no efforts to find a different placement. [R3@1:49:26.]

According to Ms. Zevon, Director of Social Work, the discharge planning efforts by the Facility include a referral to [REDACTED], a program that assists residents with obtaining housing in the community, a homeless shelter, and at least five assisted living facilities, including [REDACTED] [REDACTED]. [Ex 1, 5; R3@1:00:51, 1:07:50, 1:08:43, 1:09:25, 1:20:03.] The Appellant refused to explore any of these options, engage in further follow up, or allow staff to assist with obtaining services from [REDACTED]. [Ex 1; R3@1:00:51, 2:08:30.] When the Facility provided opportunities to the Appellant to complete the intake process at the discharge location, such as several telephone calls coordinated by the Facility, he refused to put forth any effort to cooperate. [Ex 1; R3@1:08:08; 1:19:01.] Both the Facility and the discharge location offered to make adjustments in the accommodations to meet the Appellant's preferences, but he refused to consider those options. [R3@1:05:34.]

Dr. Zaidi opined that an assisted living facility is appropriate for the Appellant because it will provide a transition from the Facility to the community that will allow him to acclimate to a


new environment and give him access to outpatient medical care as needed. [R1@1:15:50, 1:42:19.] Further testimony from Ms. Zevon demonstrated that the discharge location will allow the Appellant to maintain his independence but receive “support services as needed that will be able to assist with things like laundry, cleaning up his room and meals will be provided.” [R3@1:10:59.] Ms. Attaalla believed Appellant is a candidate for an assisted living facility where he can maintain his independence with activities of daily living and receive help with household chores. [R1@1:04:20.]

The Facility’s determination to discharge the Appellant is appropriate because the Facility has proven by substantial evidence that the Appellant’s condition has improved sufficiently so that he no longer needs nursing home care. Also, I find discharge to [REDACTED] [REDACTED] appropriate. This placement will facilitate his transition to the community and provide him with assistance to further his independence by completing household tasks, such as laundry, cleaning, and meals. The Facility is authorized to transfer the Appellant in accordance with its discharge plan.

ORDER

The Facility is authorized to discharge the Appellant to the location identified in the Amended Notice of Discharge dated February 26, 2021 and in accordance with its discharge plan.

Dated: April 26, 2021  
Albany, New York

  
Rayanne L. Babich  
Administrative Law Judge

TO:

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

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