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Department of Health

KATHY HOCHUL
Governor

MARY T. BASSETT, M.D., M.P.H.
Commissioner

KRISTIN M. PROUD
Acting Executive Deputy Commissioner

July 20, 2022

CERTIFIED MAIL/RETURN RECEIPT

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

Stephanie Zevon, 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,

Sean D. O'Brien
Acting Chief Administrative Law Judge
Bureau of Adjudication

SDO: 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

to discharge him from a residential health care facility.

COPY

DECISION

Before: Tina M. Champion
Administrative Law Judge

Held at: Videoconference via WebEx

Date: July 19, 2022

Parties: ██████████
Cobble Hill Health Center
380 Henry Street
Brooklyn, New York 11201
By: Pro Se

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

JURISDICTION

By notice dated [REDACTED] 2022, Cobble Hill Health Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge [REDACTED] [REDACTED] (the Appellant) from the Facility. The Appellant appealed the discharge determination to the New York State Department of Health (the Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) 415.3(i).

The hearing was held in accordance with the PHL; Part 415 of 10 NYCRR; Part 483 of the United States Code of Federal Regulations (CFR); and the New York State Administrative Procedure Act (SAPA).

Evidence was received and witnesses were examined. A recording was made of the proceeding.

HEARING RECORD

- ALJ Exhibits: I – Letter with Notice of Hearing and Transfer/Discharge Notice
- Facility Exhibits: 1 – Facility letter to [REDACTED] (misdated [REDACTED] 1/21, actual date [REDACTED] 22)
2 – Resident Face Sheet
- Appellant Exhibits: None
- Facility Witnesses: Stephanie Zevon, Director of Social Work
Shoa Zaidi, Medical Director
Zakiya Thomas, Acting Administrator
- Appellant Witnesses: [REDACTED] [REDACTED] Resident

FINDINGS OF FACT

1. The Appellant is a [REDACTED]-year-old male who was admitted to the Facility on [REDACTED] 2021 for short-term rehabilitation following a hospitalization for [REDACTED] and [REDACTED]. (Exhibit [Ex.] 2; Testimony [T.] Zevon.)

2. The Appellant is independent in all activities of daily living (ADLs). (Ex. 1; T. Zevon.)

3. The Appellant leaves the facility almost daily on a pass and travels throughout New York City independently, where he frequently [REDACTED]. (T. Zevon, Thomas, [REDACTED])

4. The Appellant has no skilled nursing needs and is medically stable. (T. Zaidi.)

5. The Appellants medical needs can be met in the community. (T. Zevon, Zaidi.)

6. The Appellant makes his own medical appointments in the community and attends them on his own. (T. Zevon.)

7. The Appellant is pending outpatient surgery on his [REDACTED] which he is scheduling on his own. The surgery will not require rehabilitation or skilled nursing. (T. Zevon.)

8. On [REDACTED] [REDACTED] 2022, the Facility issued a Notice of Transfer/Discharge to the Appellant which proposed discharge to the [REDACTED] Shelter [REDACTED] [REDACTED], [REDACTED]. (ALJ Ex. I; T. Zevon.)

9. The Transfer/Discharge Notice stated that the Appellant will be transferred/discharged because the Appellant's health has improved sufficiently so that the Resident no longer needs the services provided by the Facility. (ALJ Ex. I.)

10. The Appellant timely appealed the Facility's discharge determination and proposed discharge location.

11. The Appellant has remained at the Facility during the pendency of the appeal.

12. At the hearing, the Appellant stated that he does not contest the Facility's determination to discharge him, only the appropriateness of the proposed discharge location.

ISSUES

Has the Facility established that its discharge plan is appropriate?

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. (PHL § 2801[2][3]; 10 NYCRR 415.2[k].)

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

The Facility alleged that the Appellant's discharge is permissible pursuant to 10 NYCRR 415(i)(1)(i)(a)(2), which states:

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 415.3(i)(2)(iii)(b), the Facility bears the burden to prove a discharge is necessary and that the discharge plan is appropriate. Under SAPA § 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. It is less than a preponderance of evidence but more than mere surmise, conjecture or speculation, and it constitutes a rational basis for a decision. (Stoker

v. Tarantino, 101 A.D.2d 651; 475 N.Y.S.2d 562 [3d Dept. 1984], appeal dismissed 63 N.Y.2d 649.)

DISCUSSION

The Appellant does not dispute the Facility's determination to discharge him from the Facility. The Appellant challenges the appropriateness of the discharge location. Specifically, the Appellant expressed concerns that a homeless shelter is not a good placement for him due to the risk of exposure to COVID-19, and possibly because of the surgery he needs on his [REDACTED]

Ms. Zevon testified that she located a bed for the Appellant at an assisted living facility (ALF) in [REDACTED] 2022 but that the Appellant refused the placement because he would be required to sign over his income to the ALF, which he is unwilling to do. Ms. Zevon also testified that she has referred the Appellant to [REDACTED] to assist with housing in the community but that no housing has been secured yet. She testified that the Appellant has been looking for housing on his own. Ms. Zevon also testified that the Appellant has been out on pass [REDACTED] times since [REDACTED] 2022.

Dr. Zaidi testified that placement in a homeless shelter does not pose a risk to the Appellant's recovery from the outpatient [REDACTED] surgery that is pending. She further testified that healing after the surgery will be dependent on the Appellant keeping the area clean and dry, and that there is no concern of infection to the small, localized area of the [REDACTED] by the Appellant's placement at a shelter.

Ms. Thomas testified that she manages the out on pass program at the Facility. She testified that the Appellant travels throughout the city on a regular basis. Ms. Thomas testified that the Appellant has not expressed concerns with exposure to COVID-19 until he was presented with a discharge notice.

The Appellant testified as to concerns with needing to have the [REDACTED] [REDACTED] as it would reopen a wound, and concerns with exposure to COVID-19 in a shelter system. The Appellant acknowledged that he leaves the Facility a lot and is exposed to germs as he travels throughout the city. The Appellant stated that he predominately travels by utilizing the [REDACTED] while he is out on pass. The Appellant confirmed that the assisted living facility is unacceptable to him because he does not want to sign over his income.

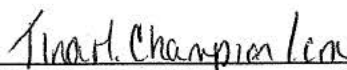
It is undisputed that discharge is necessary. Dr. Zaidi credibly testified that a shelter is appropriate for the Appellant. Ms. Zevon credibly testified that there is a risk of exposure to COVID-19 at the Facility, which is currently dealing with another outbreak in a series of several that have occurred to date. The Appellant is utilizing a bed in a skilled nursing facility that he does not medically need. The evidence supports that the Facility's plan to discharge the Appellant to a homeless shelter is the only available appropriate discharge location.

DECISION

Cobble Hill Health Center has established that its determination to discharge the Appellant was correct, and that its discharge location is appropriate.

1. Cobble Hill Health Center is authorized to discharge the Appellant in accordance with its discharge plan immediately.
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: Menands, New York
July 20, 2022



Tina M. Champion
Administrative Law Judge

TO:

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

Stephanie Zevon, Director of Social Work
Cobble Hill Health Center
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szevon@cobblehill.org