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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

August 18, 2022

**CERTIFIED MAIL/RETURN RECEIPT**

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

■■■■■■■■■■  
c/o 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: nm  
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

COPY  
DECISION

COBBLE HILL HEALTH CENTER

Respondent,

to discharge her from a residential health care facility

Hearing Before: Jean T. Carney  
Administrative Law Judge (ALJ)

Held via: Cisco WebEx videoconference

Hearing Date: August 16, 2022

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

██████████ Appellant, *Pro se*

██████████

## JURISDICTION

By notice dated [REDACTED], 2022, Cobble Hill Health Center (Cobble Hill or Facility), a residential care facility subject to Article 28 of the New York Public Health Law, determined to discharge [REDACTED] (Appellant) from the Facility on the grounds that the Appellant no longer needed the services provided by the Facility. The proposed discharge location is to the [REDACTED] Shelter at [REDACTED], [REDACTED]. The Appellant appealed the discharge determination to the New York State Department of Health (Department) pursuant to 10 New York Codes Rules, and Regulations (NYCRR) § 415.3(i).

## HEARING RECORD

In support of their determination, the Facility presented documents (Exhibits 1-32) and the testimony of Dr. Shoa Zaidi, Medical Director; Elisa Brown, MSW; Lewiz Attaalla, Rehabilitation Director; and Julianah Atunbi, RN. The Appellant testified in her own behalf, presented documents (Exhibits A-C), and the testimony of [REDACTED]. Also present was Marie Joseph, Social Worker. ALJ Exhibits I and II were admitted on the Judge's motion; and the hearing was digitally recorded.

## ISSUES

Has the Facility established that the determination to discharge the Appellant is correct and that its discharge plan is appropriate?

## FINDINGS OF FACT

Citations in parentheses refers to the testimony of the witness ("T") at the hearing and exhibits ("Exh") found persuasive in arriving at a particular finding. Any conflicting evidence was considered and rejected in favor of the cited evidence. An opportunity to be heard having been afforded the parties, and evidence having been duly considered, it is hereby found:

1. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility on [REDACTED] 2018 from [REDACTED] Hospital for short term rehabilitation, with relevant diagnoses of [REDACTED] (T Dr. Zaidi; Exhs 32 and C).

2. The Facility started discussing discharge planning options with the Appellant in [REDACTED] of 2021. As of the date of the hearing, the Facility had made numerous referrals for the Appellant to assisted living facilities, with four applications pending. Those facilities could approve the Appellant within a week. (T Brown and Appellant; Exhs 5-12, 17-20, and 22-31).

3. The Appellant is independent in her activities of daily living (ADLs). She ambulates with a walker, and transfers to a wheelchair for longer distances. The Appellant independently manages her medications and medical appointments. The Appellant was discharged from physical therapy in [REDACTED] 2021, and subsequent evaluations have shown no decline in mobility. (T Atunbi and Attaalla; Exh 3).

4. On [REDACTED] 2022, the Facility determined to discharge the Appellant to the [REDACTED] Shelter because the Appellant had become resistant to discharge planning. After being served with the Discharge Notice, the Appellant renewed her efforts to find an assisted living facility to be discharged to. The Appellant admits that her health has improved sufficiently for her to be discharged, but she objects to being discharged to the shelter. (T Brown and Appellant; Exhs A and C).

5. The Department of Homeless Services (DHS) medical director has reviewed the Facility's application for the Appellant, and has found a suitable shelter that will meet her needs if she is discharged. (ALJ II).

#### APPLICABLE LAW

A residential health care facility, also referred to 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 §§ 2801[2] and [3]; 10 NYCRR § 415.2[k]).

Pursuant to 10 NYCRR § 415.3(i)(1)(i)(a), a resident may only be discharged when the interdisciplinary care team determines that:

- (1) the transfer of 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;
- (3) the safety of individuals in the facility is endangered; or
- (4) the health of individuals in the facility is endangered.

Additionally, 10 NYCRR § 415(i)(1)(ii) requires that the facility ensures complete documentation in the resident's clinical record when transferring or discharging a resident under the above circumstances. The documentation shall be made by:

- (a) the resident's physician and, as appropriate, interdisciplinary care team, when transfer or discharge is necessary under subclause (1) or (2) of clause (a) of subparagraph (i) of this paragraph; and
- (b) a physician when transfer or discharge is necessary due to the endangerment of the health of other individuals in the facility under subclause (3) of clause (a) of subparagraph (i) of this paragraph.

The burden is on the Facility to prove by substantial evidence that the discharge is necessary, and the plan is appropriate. (10 NYCRR § 415.3(i)(2)(ii); New York State Administrative Procedure Act [SAPA] § 306[1]). 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[1984]).

### DISCUSSION

The parties agree that the Appellant is ready and able to be discharged, so the only issue to be determined is whether the discharge plan is appropriate. The Appellant argues that the shelter is not appropriate because she believes it is not safe. The Facility contends that while an assisted living facility is preferable to the shelter, the Appellant has unduly delayed such a placement, and the shelter will meet the Appellants needs until she is able to obtain more permanent housing.

The Facility has met its burden of showing that the discharge plan is appropriate. 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 evidence establishes that the Appellant’s medical needs can be met in the community, and she no longer needs the services provided in the Facility. The Facility will provide a walker and wheelchair for the Appellant, and ensure that all her prescriptions will be transferred to the pharmacy of her choice. DHS is aware of the Appellant’s mobility issues, and its Medical Director has found an appropriate shelter that will accommodate her wheelchair.


Understandably, the Appellant does not want to be discharged to the shelter system. While it may not be her preference, it meets her needs and is therefore appropriate. However, the Appellant has several applications pending for assisted living facilities, and should know within a short period of time whether any of those facilities have a bed for the Appellant. If those applications are denied, then the Appellant may be discharged pursuant to the Discharge Notice.

### ORDER

Cobble Hill Health Center has established that its discharge plan is appropriate.

1. Cobble Hill is authorized to discharge the to the [REDACTED] Shelter either [REDACTED] 2022; or upon notification that her applications for assisted living facilities have been denied.
2. If the Appellant's application to any of the assisted living facilities currently pending are accepted, then Cobble Hill is authorized to discharge the Appellant to that assisted living facility.
3. 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: Albany, New York  
August 18, 2022

  
JEAN T. CARNEY  
Administrative Law Judge

TO: Stephanie Zevon, Director of Social Work  
Cobble Hill Health Center  
380 Henry Street  
Brooklyn, New York 11201  
szevon@cobblehill.org

[REDACTED]  
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