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Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

April 6, 2023

CERTIFIED MAIL/RETURN RECEIPT

██████████
c/o ██████████
██████████

Kayika Thomas, Acting Administrator
Cobble Hill Health Center, Inc
380 Henry Street
Brooklyn, New York 11201

Lourdes Martinez, Esq., for the Facility
Sheppard Mullin
30 Rockefeller Plaza
New York, NY 10112

Joanne Lagnese, Director of Care Coordination
NYP Brooklyn Methodist Hospital
506 Sixth Street
Brooklyn, New York 11215

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,

Natalie J. Bordeaux
Chief Administrative Law Judge
Bureau of Adjudication

NJB: 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

Cobble Hill Health Center, Inc,

Respondent,

to discharge Appellant from a residential health care facility.

COPY

DECISION
AFTER
HEARING

Before: Rayanne L. Babich
Administrative Law Judge

Dates: March 21, 2023
March 28, 2023

Held at: New York State Department of Health
Webex videoconference

Parties: ██████████
c/o ██████████
██████████
██████████

Kayika Thomas, Acting Administrator
Cobble Hill Health Center, Inc
380 Henry Street
Brooklyn, New York 11201

By: Lourdes Martinez, Esq.¹
Sheppard Mullin
30 Rockefeller Plaza
New York, NY 10112

¹ On March 21, 2023, Cobble Hill Health Center, Inc. was represented by Jason Atlas, Esq. of Schwartz Sladkus Reich Greenberg Atlas, LLP.

Interested Parties: Joanne Lagnese, Director of Care Coordination
NYP Brooklyn Methodist Hospital
506 Sixth Street
Brooklyn, New York 11215

JURISDICTION

By notice dated [REDACTED] 2023, Cobble Hill Health Center, Inc., a residential health care facility (Facility), determined to discharge [REDACTED] (Appellant). The Appellant's [REDACTED] [REDACTED] appealed the proposed discharge on behalf of the Appellant.

RECORD

ALJ Exhibits: I – Notice of Hearing, [REDACTED] 2023

Facility Exhibits: 1 – Resident Face Sheet
2 – Patient Review Instrument, [REDACTED], 2023
3 – Notices, Transfer/Discharge and Interagency Transfer Form, [REDACTED], 2023
4 – Hospital Medication Administration Record, [REDACTED] through [REDACTED], 2023
5 – Hospital medical progress note, [REDACTED], 2023
6 – Hospital psychiatry progress notes, [REDACTED], and [REDACTED] 2023
7 – Hospital Nursing Care Plan, [REDACTED] 2023

Appellant Exhibits: None

Facility Witnesses: Ravindra Amin, M.D., Facility Psychiatrist
Zakiya Thomas, Acting Facility Administrator
Tessa Occuli, Assistant Director of Nursing

Hospital Witnesses: Joanne Lagnese, Director of Care Coordination
Gennadiy Grutman, M.D., Attending Physician

Appellant Witnesses: [REDACTED] Appellant's [REDACTED]
[REDACTED] Appellant's [REDACTED]

FINDINGS OF FACT

1. The Appellant, age [REDACTED] was admitted to the Facility on [REDACTED], 2020 for long term care. The Appellant's [REDACTED] and [REDACTED] serve as his designated representatives. [Ex 1; T. Thomas.]
2. The Appellant's current primary medical diagnoses include [REDACTED]
[REDACTED]. [Ex 1; T. Grutman, T. Amin.]
3. The Appellant was residing on a [REDACTED] unit suited for [REDACTED] care at the Facility. The Appellant ambulates independently but requires supervision, and assistance with all activities of daily living, including bathing, dressing, and toileting due to incontinence. His primary language is [REDACTED] [T. Thomas.]
4. On [REDACTED] 2023, the Appellant [REDACTED] and [REDACTED] a staff member at the Facility. Law enforcement was called to the scene and instructed the Facility to send the Appellant to the hospital. [Ex 3; T. Grutman, T. Amin, T. Thomas.]
5. The Appellant was admitted to NYP Brooklyn Methodist Hospital on [REDACTED] 2023 where he currently remains. [T. Lagnese.]
6. The Facility issued a Notice for Discharge on [REDACTED] 2023 to the Appellant's [REDACTED]. The Facility determined that it cannot meet the needs of the Appellant, and that the safety of the resident and others in the Facility is endangered. The Facility's discharge plan is to transfer the Appellant to the hospital. [Ex 3; T. Thomas.]
7. The Appellant was cleared for discharge from the hospital by the attending physician and psychiatrist to return to the nursing home on [REDACTED] 2023. The Facility has refused to readmit the Appellant. [Ex 6; T. Grutman.]

ISSUE

Has the Facility met its burden of proving that the Appellant's discharge is necessary 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:
 - (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 safety of individuals in the facility is endangered.
See also PHL 2803-z.
2. 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).
3. A hospital is not an appropriate discharge location. DOH *DAL NH-19-07: Notice of Transfer or Discharge and Permitting Residents to Return* (August 20, 2019, Redistributed October 11, 2022).

DISCUSSION

The Facility has not proven that the discharge is necessary because the Facility cannot meet the Appellant's needs or that the safety of the resident or others is endangered. The Facility has not proven the discharge location is appropriate.

Grounds for Transfer

The Appellant was admitted to the Facility on [REDACTED] 2020 for long term care due to [REDACTED] and his [REDACTED] and [REDACTED] have served as his representatives. [Ex 1.] The Facility is seeking to discharge the Appellant on the grounds that it cannot meet his needs after reasonable attempts at accommodation, and that the safety of the resident and others is endangered. 10 NYCRR 415.3(i)(1)(i)(a)(1) and (2). [Ex 3.] The Appellant's representatives have requested the Appellant return to the Facility.

Due to the [REDACTED] displayed toward a staff member, the Appellant was referred to the hospital where he remains, pending the outcome of this hearing. [T. Thomas.] Ravindra Amin, M.D., the Appellant's psychiatrist at the Facility, determined the Appellant's needs cannot be met at the Facility because the Facility does not have the professional staff, nursing staff, or resources to care for his [REDACTED]. However, Zakiya Thomas, Acting Administrator for the Facility, testified that the Appellant was placed in a [REDACTED] unit for residents who require advance care due to [REDACTED] [T. Thomas.] She explained that to meet the needs of these residents, all staff are trained by an accredited program to teach techniques for providing care and [REDACTED] related to [REDACTED] [T. Thomas.]

The Facility maintains two psychiatrists on staff, the unit remains [REDACTED] and many staff speak [REDACTED] including two recreational therapists who have regularly interacted with the Appellant. [T. Thomas.] Although the Appellant has a known history of [REDACTED]

as part of his [REDACTED] diagnosis, Appellant was admitted to the Facility because it is equipped with the specific resources to provide the type of care necessary for his needs.

Dr. Amin also opined that the Appellant is unsafe to return to the Facility because his behaviors endanger the safety of himself and others. [T. Amin.] However, the evidence showed that the Appellant has been treated for [REDACTED] related to his [REDACTED] diagnosis and is cleared for discharge.

Gennadiy Grutman, M.D., the hospital attending physician, testified that the Appellant has been medically cleared for discharge. [T. Grutman.] Beena Saad, M.D., the hospital attending psychiatrist, documented in the hospital medical record on [REDACTED] 2023 that the Appellant's [REDACTED] was treated with medications and "can safely be discharged to a NH" (nursing home). [Ex 6.] In addition, Dr. Saad documented in the hospital medical record on [REDACTED] 2022 that she spoke with Dr. Amin at the Facility and advised that the Appellant's behavioral problems were "well under control" and that his "medications had been optimized." [Ex 6.]

Discharge Plan


The Facility is required to develop an appropriate discharge plan which addresses the medical needs of the resident. 10 NYCRR 415.3(i)(1). The Notice of Discharge identified the hospital as the discharge plan. [Ex 3.] It is well established that a hospital is not an appropriate discharge location. DOH *DAL NH-19-07: Notice of Transfer or Discharge and Permitting Residents to Return* (August 20, 2019, Redistributed October 11, 2022). Without an appropriate discharge plan, the Facility is responsible to readmit the Appellant. The Facility's determination to discharge the Appellant based on its [REDACTED] 2023 Notice of Discharge is not sustained.

ORDER

Cobble Hill Health Center has failed to meet its burden to prove that its determination to discharge the Appellant is necessary and that transfer to the hospital is appropriate.

1. The Facility is ordered to readmit the Appellant to the first available semi-private bed prior to admitting any other person to the Facility pursuant to 10 NYCRR 415.3(i)(2)(i)(d).
2. This decision may be appealed to a court of competent jurisdiction pursuant to Article 78 of the New York Civil Practice Laws and Rules.

Dated: April 6, 2023
Albany, New York



Rayanne L. Babich
Administrative Law Judge

TO:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

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