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Department of Health

KATHY HOCHUL
Governor

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

JOHANNE E. MORNE, M.S.
Acting Executive Deputy Commissioner

December 14, 2023

CERTIFIED MAIL/RETURN RECEIPT

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

Zakiya Thomas, Administrator
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,

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

to discharge her from a residential health care facility.

COPY

DECISION

Before: Kimberly A. O'Brien
Administrative Law Judge (ALJ)

Held at: Videoconference via WebEx

Dates: December 13, 2023

Parties: ██████████
c/o Cobble Hill Health Center
380 Henry Street
Brooklyn, New York 11201
By: Pro se

Zakiya Thomas, Administrator
Cobble Hill Health Center
380 Henry Street
Brooklyn, New York 11201
By: Zakiya Thomas, Administrator

By notice dated ██████████ 2023, Cobble Hill Health Center (Facility), a residential care facility subject to Article 28 of the New York Public Health Law (PHL), determined to discharge ██████████ (Appellant) from the Facility (Discharge Notice.) 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); the New York State Administrative Procedure Act (SAPA); and Part 51 of 10 NYCRR. The ALJ admitted the Notice of Hearing and the Discharge Notice. The Facility presented two exhibits and two witnesses: Olusegun Ogunfowra M.D., and Zakiya Thomas, Administrator. The Appellant did not present any exhibits and testified on her own behalf. A digital recording was made of the proceeding.

FINDINGS OF FACT (FOF)

1. The Appellant is a [REDACTED]-year-old female who was admitted to the Facility [REDACTED] 2022. [ALJ Exhibit (Ex.) 1; Testimony (T.) Ogunfowra, Appellant.]
2. The Appellant is independent with all activities of daily living (ADLs) including dressing, grooming, bathing, toileting, transfers. The Appellant ambulates using a wheelchair. [T. Ogunfowra, Appellant.]
3. The Discharge Notice states that the Appellant will be transferred because the Appellant's health has improved sufficiently such that the Appellant no longer requires the services of the Facility. The proposed discharge is to an assisted living facility (ALF), [REDACTED] [REDACTED] [REDACTED] [REDACTED]. [ALJ Ex. 1.]
4. The Appellant timely appealed the Facility's discharge determination and proposed discharge location. The Appellant has remained at the Facility during the pendency of the appeal.

ISSUES

Has the Facility established that its determination to discharge the Appellant is correct and 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 the discharge plan is appropriate. Under SAPA §306(1), a decision in an administrative proceeding must be in accordance with substantial evidence.

DISCUSSION

The Facility's discharge notice states that the Appellant's health has improved, and she no longer requires the services it provides and proposed that the Appellant be discharged to [REDACTED] on [REDACTED] 2023. Dr. Ogunfowra testified that the Appellant is medically stable and independent with her ADLs, including making her own decisions and she has gone out on pass from the Facility. Dr. Ogunfowra testified that he is familiar with the services ALFs provide and

believes that discharge to an ALF is appropriate. Further, he has been in communication with the medical directors of a few different ALFs regarding Appellant's discharge, and [REDACTED] confirmed that the Appellant has been accepted there. [Facility Ex. 2.]

Ms. Thomas, Administrator, testified that the Facility has been discussing discharge with the Appellant since [REDACTED] 2023. The Facility is aware that the Appellant would like to be placed in an ALF in [REDACTED]. Ms. Thomas explained that there are only a few ALF's in [REDACTED], and for this reason it is difficult to get residents placed there. She testified that Appellant toured [REDACTED] an ALF located in [REDACTED], on [REDACTED] 2023. The [REDACTED] is considering the Appellant but has not fully assessed her needs and has not yet determined whether to admit her. [Facility Ex. 1.] Ms. Thomas testified that the Appellant can be placed on waiting lists for [REDACTED] ALFs, if The Veranda does not admit her. It is not uncommon for residents discharged to an ALF to transfer to a different ALF when a placement becomes available. The Facility sent applications to ALF's in [REDACTED] because it is closer to [REDACTED] than [REDACTED] where [REDACTED] is located. Appellant recently declined a placement at [REDACTED] on [REDACTED], an ALF located in [REDACTED]. If Appellant is not accepted by [REDACTED], Ms. Thomas is going to reach out to [REDACTED] again to see if they will accept the Appellant, and if not, whether another facility in Brooklyn will accept the Appellant. She confirmed that the Appellant has been accepted at [REDACTED] and they will hold her place until the discharge determination is made. [Facility Ex. 2.]

The Appellant testified that she wishes to be placed at [REDACTED] because it is located in [REDACTED], where her friends and family reside. She testified that it was only about the time she received the Discharge Notice that she became aware that the Facility intended to discharge her.

She does not dispute that she was offered and declined a placement at [REDACTED], an ALF located in [REDACTED]. She testified that if she does not get a placement at [REDACTED], she will accept a placement at [REDACTED] if it is available. She testified that she will not accept a placement at [REDACTED] because it is too far away from friends and family.

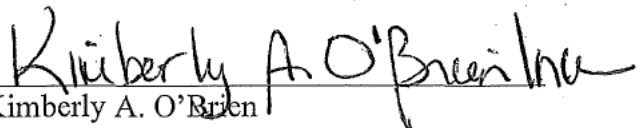
The Facility will continue to advocate for the resident to be placed at [REDACTED] and is reapplying to [REDACTED] and other ALFs closer to [REDACTED] than [REDACTED]. The Appellant is encouraged to work with the Facility and if she is offered a placement at [REDACTED] or an ALP closer to [REDACTED], she should accept it. The Appellant's health has improved sufficiently such that she no longer needs the services it provides and the proposed discharge to [REDACTED] is available and appropriate to meet the Appellant's needs.

DECISION

The Facility has established that its determination to discharge the Appellant was correct, and that its discharge/transfer location is appropriate.

1. The appeal is DENIED, the Facility is authorized to discharge the Appellant to [REDACTED] on or after [REDACTED] 2023.
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: Albany, New York
December 13, 2023


Kimberly A. O'Brien
Administrative Law Judge