

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATION AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CONNECTICUT 06105

██████████ 2017  
Signature Confirmation

Client ID# ██████████

Request ID #816558

NOTICE OF DECISION

PARTY

██████████  
██████████  
██████████  
██████████

Terrance Brennan, Administrator  
Regal Care at New Haven  
181 Clifton St..  
New Haven, CT 06513

PROCEDURAL BACKGROUND

On ██████████ 2017, Parkway Pavilion & Rehabilitation Center (the "Facility") issued a letter proposing to involuntarily discharge ██████████ (the "Appellant"), from its care within 30 days of her receipt of the letter due to non-payment.

On ██████████ 2017, the Appellant requested an administrative hearing to contest the Facility's proposed discharge.

On ██████████, 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for ██████████ 2017.

On ██████████ 2017, in accordance with Connecticut General Statutes § 19a-535 and § 4-176e to § 4-189, inclusive, OLCRAH held an administrative hearing at Regalcare at New Haven.

The following individuals were present at the hearing:

██████████, the Appellant  
Terrance Brennan, Administrator, Regalcare at New Haven

Donna Williams, Social Worker, Regalcare at New haven  
Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence. On [REDACTED] 2017, the record closed.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the facility acted in accordance with state law when it proposed to involuntarily discharge the Appellant from the facility due to non-payment of the applied income.

### **FINDING OF FACTS**

1. In [REDACTED] of 2016 the Appellant was admitted to the facility for a short term stay. She had fallen on several occasions was hoping to build up her strength so she could safely return to her own home. (Appellant and Social Worker's testimony)
2. At the time she was admitted to the facility, the Appellant had an apartment in the community to which she intended to return. (Appellant's testimony)
3. On [REDACTED], 2016, the Appellant's daughter took possession of the admissions packet from the facility. As of [REDACTED] 2017, the admissions packet had not been returned to the Admitting office. (Exhibit G: Letter from Director of Admissions)
4. The admission packet was never returned to the facility. (Social Worker's testimony)
5. Ascend has approved the extension of a short term stay for the Appellant. The Appellant is currently working with the Money Follows the Person ("MFP") to put services in place when she returns to her home. (Social Worker's testimony)
6. The Appellant cannot return to her previous home and MFP staff is looking for a new residence for her. (Facility Director's testimony)
7. On [REDACTED] 2017, the Department of Social Services (the "Department") issued a notice to the Appellant advising her that she was eligible for Medicaid effective [REDACTED] of 2016. The notice advised that she was eligible for the months of [REDACTED] of 2016, and [REDACTED] through [REDACTED] of 2017. The notice advised her that she must pay \$1665 to the facility in applied income ("AI") for the month of [REDACTED] of 2016 and \$1670 in AI each month beginning in [REDACTED] of 2017. (Exhibit E: Notice of Approval for Long Term Care Medicaid)

8. On ██████ 2017, the Department sent the Appellant another notice advising her that it had granted Medicaid assistance for nursing home costs and that she must pay \$1670 each month towards the cost of her care effective ██████ 2017. The notice also advised the Appellant that she must pay \$1665 in applied income towards the Resident's cost of care in the facility for ██████ of 2016 and \$1670 each month for ██████, ██████ and ██████. (Exhibit D: Notice of ██████ 2017)
9. Medicaid is currently paying the facility for a portion of the cost of the Appellant's stay. The Appellant has not paid any of the applied income. (Administrator's testimony)
10. The Appellant was under the impression that Title 19-Medicaid was paying for the entire stay at the facility and was unaware that she had to pay applied income. (Appellant's testimony)
11. As of ██████ 2017, the Appellant had paid no applied income and owed the facility \$5010.00. (Exhibit C: Invoice from Regalcare of New Haven)
12. On ██████, 2017, the Facility issued a 30 Day Notice of Intent to Transfer or Discharge stating that the Resident was being discharged to the Appellant's home for non-payment of \$5010.00. (Exhibit A: Notice of Discharge)
13. On ██████, 2017, the Facility issued a discharge plan to the Appellant that was not signed by either the Appellant's personal physician or the medical director at the facility. There is no evidence that the Appellant's family was consulted with relation to the creation of the discharge plan. (Exhibit B: Discharge Plan)

### **CONCLUSION OF LAW**

1. Section 19a-535(h)(1) of the Connecticut General Statutes (Conn. Gen. Stat.) authorizes the Commissioner of the Department of Social Services to hold a hearing to determine whether the transfer or discharge is in accordance with this section.
2. Conn. Gen. Stat. 19a-535(a)(4) provides that the term "discharge" means the movement of a resident from a facility to a non-institutional setting.
3. Conn. Gen. Stat. §19a-535(b) provides that a facility shall not transfer or discharge a resident from the facility except to meet the welfare of the resident which cannot be met in the facility, or unless the resident no longer needs the services of the facility due to improved health; the facility is required to transfer the resident pursuant to section 17b-359 or section 17b-360, or the health or safety of individuals in the facility is endangered, or in the case of a self-pay resident, for the

resident's nonpayment or arrearage of more than fifteen days of the per diem facility room rate, or the facility ceases to operate.

4. Conn. Gen. Stat. §19a-535(a)(5) provides in part that "self-pay resident" means a resident who is not receiving state or municipal assistance to pay for the cost of care at a facility.
5. The Appellant is not a self-pay resident.
6. **The facility cannot discharge the Appellant for non-payment as she is not a self-pay resident.**
7. Conn. Gen. Stat. § 19a-535 (d) provides in relevant part that no resident shall be transferred or discharged from any facility as a result of a change in the resident's status from self-pay or Medicare to Medicaid provided the facility offers services to both categories of residents.
8. Conn. Gen. Stat. §19a-535(c)(1) provides that before effecting a transfer or discharge of a resident from the facility, the facility shall notify, in writing, the resident and resident's guardian or conservator, if any, or legally liable relative or other responsible party if known, of the proposed transfer or discharge the reasons therefore, the effective date of the proposed transfer or discharge, the location to which the resident is to be transferred or discharged, the right to appeal the proposed transfer or discharge and the procedures for initiating such an appeal as determined by the Department of Social Services, the date by which an appeal must be initiated in order to preserve the resident's right to an appeal hearing and the date by which an appeal must be initiated in order to stay the proposed transfer or discharge and the possibility of an exception to the date by which an appeal must be initiated in order to stay the proposed transfer or discharge for good cause, that the resident may represent himself or herself or be represented by legal counsel, a relative, a friend or other spokesperson, and information as to bed hold and nursing home readmission policy when required in accordance with section 19a-537. The notice shall also include the name, mailing address and telephone number of the State Long-Term Care Ombudsman. If the resident is, or the facility alleges a resident is, mentally ill or developmentally disabled, the notice shall include the name, mailing address and telephone number of the Office of Protection and Advocacy for Persons with Disabilities. The notice shall be given at least thirty days and no more than sixty days prior to the resident's proposed transfer or discharge, except where the health or safety of individuals in the facility are endangered, or where the resident's health improves sufficiently to allow a more immediate transfer or discharge, or where immediate transfer or discharge is necessitated by urgent medical needs or where a resident has not resided in the facility for thirty days, in which cases notice shall be given as many days before the transfer or discharge as practicable.
9. Conn. Gen. Stat. § 19a-535(e) provides that except in an emergency or in the

case of transfer to a hospital, no resident shall be transferred or discharged from a facility unless a discharge plan has been developed by the personal physician of the resident or the medical director in conjunction with the nursing director, social worker or other health care provider. To minimize the disruptive effects of the transfer or discharge on the resident, the person responsible for developing the plan shall consider the feasibility of placement near the resident's relatives, the acceptability of the placement to the resident and the resident's guardian or conservator, if any or the resident's legally liable relative or other responsible party, if known, and any other relevant factors which affect the resident's adjustment to the move. The plan shall contain a written evaluation of the effects of the transfer or discharge on the resident and a statement of the action taken to minimize such effects. In addition, the plan shall outline the care and kinds of service which the resident shall receive upon transfer or discharge. Not less than thirty days prior to an involuntary transfer or discharge, a copy of the discharge plan shall be provided to the resident's personal physician if the discharge plan was prepared by the medical director, to the resident and the resident's guardian or conservator, if any, or legally liable relative or other responsible party, if known.

**10. The Facility's discharge plan does not comply with state statutes.**

**DISCUSSION**

Per the statutes, the facility may not discharge the Appellant for non-payment because it is receiving Medicaid payments. The Appellant has been advised that she must pay applied income. If she is not complying with her obligation, the facility cannot discharge the Appellant but has every right to seek other recourse.

In addition, if this had been a case where the Facility had a legitimate reason to discharge the Appellant, the Facility would be required to present a written discharge plan in accordance with Conn. Gen. Stat. §19a-535(e). (COL # 9). The statute provides that no resident shall be transferred or discharged from a facility unless a discharge plan has been developed by the personal physician of the resident or the medical director in conjunction with the nursing director, social worker or other health care provider. The discharge plan presented was not signed by a physician and there was no written evaluation of the possible effects of the transfer and efforts made to minimize disruptive effects. However, as previously stated, the Facility may not discharge the Appellant for non-payment as they have proposed, because the Facility is receiving Medicaid payments for the Appellant.

**DECISION**

The Appellant's appeal is **GRANTED**.

**ORDER**

1. The Facility is ordered to rescind its proposal to involuntarily discharge the Appellant from its care.
2. No later than [REDACTED], 2017, the Facility will submit to OLCRAH proof of compliance with this order.

*Maureen Foley-Roy*  
**Maureen Foley-Roy**  
**Hearing Officer**

Cc: Barbara Cass, Section Chief, Facility Licensing and Investigations Section,  
Connecticut, Department of Public Health, 410 Capitol Avenue, MS#12HSR,  
P.O. Box 340308, Hartford, CT 06134-0308  
Dan Learman, LTC Ombudsman, New Haven

### **RIGHT TO REQUEST RECONSIDERATION**

The Appellant has the right to file a written reconsideration request within **15** days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within **25** days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Legal Counsel, Regulations and Administrative Hearings, 55 Farmington Avenue, Hartford, CT 06105.

### **RIGHT TO APPEAL**

The Appellant has the right to appeal this decision to Superior Court within **45** days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45-day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or his/her designee in accordance with §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the Appellant resides.