

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 #832158

NOTICE OF DECISION

PARTY

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

Marley West, Acting Administrator  
Advanced Center for Nursing & Rehab  
169 Davenport Avenue  
New Haven, CT 06519

PROCEDURAL BACKGROUND

On ██████████ 2017, Advanced Center for Nursing & Rehab (the "Facility") issued a Notice of Intent to discharge ██████████ (the "Appellant") from care on ██████████ 2017 to Three Judges Motor Lodge of New Haven, Connecticut.

On ██████████ 2017, the Appellant requested an administrative hearing to contest the facility's proposed action to discharge him from the facility.

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

On ██████████ 2017, the Appellant, through Ombudsman ██████████, requested to reschedule the hearing to afford the Appellant time to obtain legal representation.

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

On [REDACTED] 2017, in accordance with Connecticut General Statutes § 19a-535 and § 4-176e to § 4-189, inclusive, OLCRAH held an administrative hearing at Advanced Center for Nursing and Rehab located at 169 Davenport Avenue, New Haven, Connecticut.

The following individuals were present at the hearing:

[REDACTED], Appellant

Marley West, Acting Administrator, Advanced Center for Nursing & Rehabilitation  
 Eli Samowitz, Assistant Administrator, Advanced Center for Nursing & Rehabilitation  
 Kristy Sonstroem, LMSW, Director of Social Services, Advanced Center for Nursing & Rehabilitation  
 Shelley Starr, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the facility acted in accordance with the statutory requirements when it proposed to involuntarily discharge the Appellant from the facility due to not requiring the skilled nursing services provided by the facility.

### **FINDING OF FACTS**

1. On [REDACTED] 2016, the Appellant was admitted to the Advanced Center for Nursing & Rehab of New Haven, from Yale hospital for a short term anticipated stay. (Facility Testimony; Exhibit 5:Level of Care Assessment)
2. The Appellant's primary medical diagnosis at the time of admission to the facility included a meniscus tear injury and Type 2 Diabetes Mellitus without complications. (Facility Testimony; Exhibit 5 Connecticut LTC Level of Care Determination Form)
3. Ascend is the Department of Social Service's contractor for reviewing nursing home level of care requests for authorization of Medicaid payment. (Hearing Record)
4. On [REDACTED] 2016, Ascend terminated long term care payments because the Appellant no longer required skilled nursing level of care. (Facility Testimony; Exhibit 5: Connecticut LTC Level of Care Determination Form dated [REDACTED]/16 and [REDACTED]16)
5. Since the Appellant's admission, all aspects of his primary diagnosis have improved and he is independent with all activities of daily living ("ADL's"). (Facility Testimony; Appellant's Testimony; Exhibit 5: Connecticut LTC Level of Care Determination Form dated [REDACTED]/16 and [REDACTED]/16)

6. On [REDACTED] 2017, the Appellant was screened for a PT assessment resulting that he has a full range of motion and is independent with all functional activities with no assistive device. (Facility Testimony; Exhibit 9: Letter from Physical Therapy dated [REDACTED] 2017)
7. On [REDACTED] 2017, the facility issued a Notice of Intent to Discharge signed by the Administrator. The notice states the reason for the discharge is that you no longer need nursing home services and the stay is no longer approved under the PASRR/level of care program. The notice informed the Appellant of the facility's intent to discharge him from the facility on [REDACTED] 2017 to the Three Judges Motor Lodge of New Haven. (Exhibit 1: Notice of Intent to Discharge dated [REDACTED] 2017; Facility's Testimony)
8. On [REDACTED] 2017, the facility prepared a Discharge Plan providing that a discharge from the facility will occur on [REDACTED] 2017 and social services and the interdisciplinary team will work with the resident for a safe and comprehensive discharge plan. (Exhibit 1: Discharge Plan dated [REDACTED] 2017)
9. The Facility's plan outlines various aspects that will be provided to the Appellant indicating that the Appellant will be provided with appropriate paperwork including a W-10 and discharge summary, follow up appointments will be scheduled with his primary care physician, and any other scheduled MD appointments and clinical information will be on the W10, appropriate referrals can be made, including a 211 referral if the Appellant does not have an address that he can be discharged to (ie: with a friend or family), to be put on the waiting list for a homeless shelter. The facility will pay for an initial 2-night stay at the Three Judges Motor Lodge of New Haven and will hold his belongings for 30 days, if he is unable to take all of his belongings. The Appellant will be provided with medications left over at the facility and prescriptions for any medications until his follow up appointment with his primary care physician. The plan noted that the discharge plan has been seen and reviewed by the medical and interdisciplinary team at this facility. (Facility's Testimony; Exhibit 1: Notice of Intent to Discharge with Plan dated [REDACTED] 2017)
10. There is no indication that the discharge plan was developed and approved by the Appellant's personal physician or the facility medical director. (Exhibit 2: Discharge Plan dated [REDACTED] 2017)
11. The Appellant's primary concern with his intended discharge is that he is homeless and does not want to stay at the Three Judges Motor Lodge of New Haven. In addition, he has no friends or relatives that he can reside with. (Appellant's Testimony)

### **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. Section 19a-535(a) of the Connecticut General Statutes provides for the purposes of this section: (1) "Facility" means an entity certified as a nursing facility under the Medicaid program or an entity certified as a skilled nursing facility under the Medicare program or with respect to facilities that do not participate in the Medicaid or Medicare programs, a chronic and convalescent nursing home or a rest home with nursing supervision as defined in section 19a-521; (2) "continuing care facility which guarantees life care for its residents" has the same meaning as provided in section 17b-354; (3) "transfer" means the movement of a resident from one facility to another facility or institution, including, but not limited to, a hospital emergency department, if the resident is admitted to the facility or institution or is under the care of the facility or institution for more than twenty-four hours; (4) "discharge" means the movement of a resident from a facility to a non-institutional setting; (5) "self-pay resident" means a resident who is not receiving state or municipal assistance to pay for the cost of care at a facility, but shall not include a resident who has filed an application with the Department of Social Services for Medicaid coverage for facility care but has not received an eligibility determination from the department on such application, provided the resident has timely responded to requests by the department for information that is necessary to make such determination; and (6) "emergency" means a situation in which a failure to effect an immediate transfer or discharge of the resident that would endanger the health, safety or welfare of the resident or other residents.
3. Section 19a-535(b) of the Connecticut General Statutes provides in part 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 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. In each case the basis for transfer or discharge shall be documented in the resident's medical record by a physician or an advanced practice registered nurse. In each case where the welfare, health or safety of the resident is concerned the documentation shall be by the resident's physician or the resident's advanced practice registered nurse.

**The Facility correctly determined the Appellant does not require skilled nursing level of care due to his improved health, as determined by Ascend.**

4. Section 19a-535(c)(1) of the Connecticut General Statutes 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 may represent himself 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 numbers 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.

**The Facility correctly issued the Appellant a notice of the proposed discharge date and allowed at least 30 days.**

5. Section 19a-535(e) of the Connecticut General Statutes 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 affects 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 affects. 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 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.

**The Facility has not met the statutory requirement of formulating a discharge plan developed by the Appellant's physician or the medical director in conjunction with the nursing director, social worker or other health care providers.**

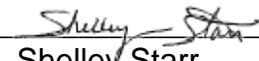
**The Facility has not formulated a discharge plan to include a written evaluation of the effects of the transfer or discharge on the resident, a statement of action taken to minimize such effects or provided a copy of the completed plan to all appropriate parties not less than 30 days prior to an involuntary transfer or discharge as outlined in CGS § 19a-535(e).**

**DECISION**

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

**ORDER**

1. The facility is ordered to rescind its [REDACTED] 2017 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.

  
Shelley Starr  
Hearing Officer

cc: Barbara Cass, CT Department of Public Health  
[REDACTED] New Haven Regional Ombudsman  
Marley West, Acting Administrator, Advanced Center for Nursing & Rehab of  
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.