

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATION AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CONNECTICUT 06105-3730

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

CL ID # ██████████
Request ID #817044

NOTICE OF DECISION

PARTY

██████████
C/O ██████████
██████████
██████████

Terrence Brennan , Administrator

██████████
██████████
██████████

PROCEDURAL BACKGROUND

On ██████████ 2017, Regal Care at ██████████ (the "Facility") issued a letter proposing to involuntarily discharge ██████████ (the "Appellant"), from its care within 30 days of his receipt of the letter.

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 181 Clifton St. New Haven, CT.

The following individuals were present at the hearing:

██████████, Appellant
██████████ Appellant's sister, Conservator of Person and Property

██████████ Appellant's Brother in-law
Terrence Brennan, Administrator
Charlene Francois, RN, ADNS
Donna Williams, Director of Social Services
Miklos Mencseli, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Facility's proposal to discharge the Appellant complies with all applicable laws.

FINDING OF FACTS

1. In ██████████ 2016, the Appellant entered the Facility. (Testimony)
2. Smoking is not permitted inside the facility, allowed only in designated areas and times, all residents must be supervised while smoking, the possession or smoking of illegal substances is prohibited, the possession of fire sources (matches, lighters) is prohibited and repeat offenders of the smoking policy are ultimately subjected to discharge planning. (Testimony)
3. On ██████████, 2016 and ██████████ 2016, the Appellant signed and dated the facilities Resident Smoking Agreement form. The form outlines the facilities policy regarding smoking. (Exhibit 1 & 2: Resident Smoking Agreement form)
4. On ██████████ 2016, the Appellant was found to have contraband (pill) in his possession. (Exhibit 3: Facility Contraband Infraction Tracking form)
5. On ██████████, 2016, the Appellant violated the facility smoking policy. (Exhibit 3)
6. On ██████████, 2016, the Appellant had a lighter in his possession smoked while unsupervised at the facility. (Exhibit 3)
7. On ██████████ 2016, the Appellant had a lighter in his possession. (Exhibit 3)
8. On ██████████ 2016, the Appellant had a lighter in his possession. (Exhibit 3)
9. On ██████████ 2017, the Appellant had smoke items and Budweiser can in his possession. (Exhibit 3)
10. On ██████████, 2017, the Appellant smoked unsupervised while in his room/bathroom and had a lighter in his possession. (Exhibit 3)
11. On ██████████, 2017, the Appellant smoked unsupervised while in his room/toilet. (Exhibit 3)

12. The Facility has reviewed the smoking policy on several occasions with the Appellant after his first incident. (Testimony)
13. The Appellant is currently wearing a nicotine patch. He previously had the patch but it was removed due to his smoking violation. (Exhibit 3, Testimony)
14. On [REDACTED] 2017, the Facility issued a letter of discharge to the Appellant. The plan is to discharge the Appellant to [REDACTED] House. (Exhibit 4: lettered dated [REDACTED]-17)
15. Attached to the letter was a discharge plan that states the facility will make a Referral to a Home Care Agency to help with Medication management, schedule an appointment with primary care doctor after discharge and schedule transportation for discharge. (Exhibit 5: Discharge Plan dated [REDACTED]-17)
16. The facility provided a document signed by an APRN regarding the Appellant's medical status. (Exhibit 6)
17. The Facility's planned discharge for the Appellant to a shelter or residence of his choice lacked documentation from the Appellant's personal physician that the plan meets the welfare of the resident, evaluation of the effects of the transfer and actions taken to minimize such effects.
18. There was a discharge plan but it was defective.

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(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.

4. On ██████████ 2017, the Facility correctly issued a 30 day notice. The notice listed the effective date as 30 days of receipt of this letter with a discharge to Columbus House shelter.
5. CGS Section 19a-535 (b) provides a facility shall transfer/discharge a patient when the health or the safety of individuals in the facility are endangered. The basis for the transfer/discharge shall be documented in the patient's medical record by a physician.
6. The Facility through the Appellant's Contraband Infraction Tracking form has documented the Appellant's repeated failure to follow the facility policies and safety rules, specifically, the Facility's policy on smoking.
7. 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 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 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.

8. The Facility of Regal Care [REDACTED] discharge plan was presented without documentation from the Appellant's personal physician that the plan meets the welfare of the resident, evaluation of the effects of the transfer and actions taken to minimize such effects.
9. The Facility's action to discharge the Appellant is incorrect as the Facility's plan does not meet the statutory guidelines.

DISCUSSION

The facility in this case, Regal Care [REDACTED] has initiated proceedings to discharge the Appellant from its care as the Appellant has failed to follow the facility's policies that endangers his safety and the potential safety of the other residents. The facility has documented that the Appellant has in fact been non-compliant with the smoking policies of the facility. The facility has valid grounds for initiating discharge proceedings. However, State 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. Therefore, since the facility did not develop a discharge plan, the facility may not discharge the Appellant based on the 30 day notice sent to the Appellant on [REDACTED] 2017.

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.


Miklos Mencseli
Hearing Officer

C: Desiree C. Pina, LTC Ombudsman Program
Dan Lerman, Regional Long Term Care Ombudsman
Regal Care of New Haven – Terrence Brennan

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 Administrative Hearings and Appeals, 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, provided that the petition for reconsideration was filed timely with the Department. 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 the Commissioner's 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.