

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3725

[REDACTED] 2017  
Signature Confirmation

Client ID # [REDACTED]  
Request # 830553

NOTICE OF DECISION

PARTY

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2017, Regal Care at New Haven (the "Facility") sent [REDACTED] (the "Appellant") a Notice of Discharge ("NOD") proposing to involuntarily discharge the Appellant from its care within 30 days of its receipt of the letter.

On [REDACTED] 2017, the Appellant's sister and conservator, [REDACTED], requested an administrative hearing to contest the Department's decision to involuntarily discharge the Appellant from the facility.

On [REDACTED] 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for [REDACTED], 2017.

On [REDACTED], 2017, in accordance with sections 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

- [REDACTED], Appellant
- [REDACTED], Appellant's sister and Conservator)
- Terrance Brennan, Administrator of Regal Care of New Haven
- Chris Regan, Director of Nursing RN DNB
- Donna Campbell, Director of Social Services (SW)
- Almelinda McLeod, 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.

### **FINDINGS OF FACT**

1. On [REDACTED], 2016, the Appellant was admitted into Regal Care of New Haven from the St. Rafael's campus under Yale New Haven Hospital. (Facility testimony)
2. The Appellant's diagnosis upon entering the facility were the following: Alcohol dependency with withdrawals, pneumonia, hypertension, Traumatic Brain Injury ("TBI"), Hepatitis C and has a history of seizures. (Exhibit 4)
3. Prior to his admission into Regal Care of New Haven, the Appellant had been homeless for a period of 30 years. (Conservator's testimony)
4. The Appellant's sister, [REDACTED], is the Appellant's conservator for his person and property. (Exhibit A and C)
5. Upon the Appellant's admission on [REDACTED] 2016, the Appellant signed the Resident Smoking Agreement form which outlines the facilities policy regarding smoking. ( Facility testimony)
6. On [REDACTED] 2016, the Appellant violated the smoking policy by smoking in the bathroom. A non-invasive search was conducted and the Appellant was found to have had a cigarette and lighter. (Exhibit 5)
7. On [REDACTED] 2016, the Facility re-educated the Appellant and had him re-sign the smoking policy. (Exhibit 5)
8. On [REDACTED] 2017, the Appellant violated the smoking policy as the smell of smoke emanated from his room. A non-invasive search was conducted and the Appellant was found to have had 17 cigarettes and lighter. ( Exhibit 5)
9. On [REDACTED], 2017, the Facility re-educated the Appellant on the smoking policy, withheld his privileges and initiated a nicotine patch. (Exhibit 5)

10. On [REDACTED] 2017, the Appellant violated the smoking policy when the Appellant's roommate reported he was smoking in the bathroom. (Exhibit 5)
11. On [REDACTED] 2017, the facility re-educated the Appellant on the smoking policy, discontinued the nicotine patch and allowed smoking with 1 to 1 supervision. (Exhibit 5)
12. On [REDACTED] 2017, the Appellant violated the smoking policy by smoking in his room. (Exhibit 5)
13. On [REDACTED] 2017, the facility terminated his smoking privileges, resumed the nicotine patch and conducted 15 minute checks and a search every 72 hours. (Exhibit 5)
14. On [REDACTED] 2017, the Appellant violated the smoking policy by smoking in the bathroom. The Appellant was found with a cigarette and lighter. (Exhibit 5)
15. On [REDACTED] 2017, the Facility conducted non-invasive search every 72 hours and changed his room to the third floor. (Exhibit 5)
16. On [REDACTED] 2017, the Appellant violated the smoking policy by smoking in the bathroom. The Appellant was found with matches and lighter. (Exhibit 5)
17. On [REDACTED] 2017, the Facility re-educated the Appellant on the smoking policy, conducted non-invasive search every 72 hours and moved the Appellant back down to the second floor. (Exhibit 5)
18. On [REDACTED] 2017, the Facility issued a Notice of Discharge to the Appellant. The plan is to discharge him to the Conservator's address, [REDACTED] (Exhibit 1)
19. The reason for the discharge is because the health of individuals in the facility is endangered due to the Appellant's violation of the smoking policies. (Exhibit 1 )
20. The Discharge notice included the Appellant's appeal rights, contact information with the State of Connecticut Long Term Care Ombudsman and the Office of Protection and Advocacy and included the signature of the Director of Nursing, who was acting Administrator. The Discharge plan was signed by the facilities Medical Director, Dr. Anuruddha Walaliyadda.

21. The Appellant has no personal physician. (Appellant & Conservator's testimony)
22. The discharge plan calls for the Appellant to be discharge to [REDACTED] 2, a referral for Homecare Agency to help with medication management, a Primary Care doctor's appointment will be scheduled prior to his discharge for follow-up appointments and transportation to be scheduled for discharge.
23. On [REDACTED], 2017, the Appellant violated the smoking policy by smoking in the bathroom; he was found with both cigarettes and matches. (Exhibit 5)
24. On [REDACTED] 2017, the Facility placed the Appellant on a 1 to 1 monitoring for 24 hours and resumed the nicotine patch. ( Exhibit 5)
25. On [REDACTED], 2017, the Appellant was observed picking through the ashtray for cigarette butts. ( Exhibit 5)
26. The Appellant completes activities of daily living ("ADL's) independently. He will need assistance with medicine administration. ( Facility testimony)
27. The Appellant's conservator disagrees with the discharge to her home because due to other family members residing with her plus her grandchildren on the weekends, there are no accommodations for him. In addition, she works full time and cannot provide 24 hour care or supervision, which the Appellant requires. A more appropriate place for him would be in a group home setting where he can be supervised. (Conservators testimony)
28. The Appellant had been approved for Money follows the person. (Conservator testimony)
29. As of the date of the hearing, the Appellant is waiting for suitable group home setting. ( Facility's & Appellant's testimony)

### **CONCLUSIONS OF LAW**

1. Section 19a-535 (h) (1) of the Connecticut Statutes (Conn. Gen. Stat.) authorizes the Commissioner of the Department of Social Services to hold a hearing to determine whether the transfer of 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 a facility shall not transfer or discharge a patient from the facility except 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.
- 4. The facility correctly determined the health and safety of the residents were endangered and correctly documented the reason why the Appellant was discharged from the facility.**
5. 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 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 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 days prior to the residents proposed transfer or discharge, except where the health or safety of individuals in the facility for thirty days, in which cases notice shall be given as many days before the transfer or discharge as practicable.
- 6. The Facility correctly notified the Appellant and his conservator of the proposed discharge with, at least, 30 day notice and clearly stated that the reason was "The safety of individuals in the facility is endangered secondary to violation of the smoking policy." In accordance with the statute.**
- 7. The Facility correctly provided the Appellant with the Name, address and telephone numbers of the State of Connecticut Long Term Care**

**Ombudsman, Department of Social Services and the Office of Protection and Advocacy for Persons with Disabilities and his right to a Fair Hearing to the Department of Social Services, Offices of Hearings & Appeals in accordance with the statute.**

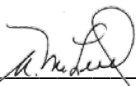
8. Conn. Gen. Stat. § 19a-535(e) provides that except in an emergency or in the case of transfer to a hospital, no resident shall be transferred or discharged from a facility unless a discharge plan has been developed by the personal physician of the resident or the medical director in conjunction with 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 legal liable relative or other responsible party, if known.
9. **Because the Appellant is independent in all his ADL's, there is no skilled nursing service that is being disrupted in the discharge other than help administering his medication. The discharge plan correctly addressed his needs for a homecare agency to help administer his medication, follow up appointments with a primary care doctor and transportation for the discharge in accordance with state statute.**
10. **The Appellant has no personal physician therefore; the Facility's discharge plan was correctly presented with documentation from the facility's Medical director in conjunction with the nursing director.**
11. **The Facility's action to discharge the Appellant is correct as the Facility's plan does meet the statutory guidelines.**

**DISCUSSION**

The facility's action to discharge the Appellant was appropriate as the Appellant has consistently violated the smoking policies. The facility has demonstrated and documented all the different ways they tried to address and remedy the situation with the Appellant and his conservator. However, the facilities efforts did not stop the behavior. All of the statutory guidelines were met in this case, thus the action to discharge the Appellant for the safety of the other residents of the facility is upheld.

**DECISION**

The Appellant's appeal is DENIED



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Almelinda McLeod  
Hearing Officer

CC: Lisa Wells, SSOM, New Haven Regional Office  
Brian Sexton, SSOM, New Haven Regional Office  
Cheryl Stuart, SSPM, New Haven Regional Office  
Terrance Brennan, Administrator, Regal care 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, 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 his 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.



