

[REDACTED], the Appellant
[REDACTED], mother and conservator for Appellant
[REDACTED] Co-Director of Social Services, [REDACTED] Center
[REDACTED] Co-Director of Social Services, [REDACTED] Center
Roberta Gould, Hearing Officer

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 because he no longer needs the care and services of a nursing facility due to improved health.

FINDING OF FACTS

1. The Resident was admitted to [REDACTED] Center on [REDACTED], 2017, due to shoulder replacement. (Hearing record)
2. The Resident has been diagnosed with [REDACTED]. He requires assistance with bathing, re-directing and medication management. (Exhibit 3: Psychiatric evaluation dated [REDACTED] 2017 and testimony of [REDACTED])
3. The Resident's physician is Dr. [REDACTED] (Exhibit 3)
4. On [REDACTED] 2017, the Facility issued a Notice of Discharge to the Resident because he no longer needed the care and services of a nursing facility due to improved health. The notice indicated that the Resident would be discharged to [REDACTED] homeless shelter. The plan was signed by [REDACTED] Administrator of [REDACTED] Center, [REDACTED] RN, and [REDACTED] Co-Director of Social Services. (Exhibit 1: Notice of intent to discharge dated [REDACTED] 2017 and Social Worker's testimony)
5. The Resident applied for Money Follows the Person ("MFP") assistance and an assessment has been completed by the Department of Mental Health and Addiction Services ("DMHAS") and MFP. (Conservator's testimony and Social worker's testimony)
6. The Appellant is seeking placement in a safe environment outside of the nursing facility. (Conservator'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. 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. In each case the basis for transfer or discharge shall be documented in the resident's medical record by a physician. In each case where the welfare, health or safety of the resident is concerned the documentation shall be by the resident's physician.
4. 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.
5. The Facility gave the Appellant, his Conservator and the State Long-Term Care Ombudsman at least 30 days notice of the proposed discharge date and all other information as required by State Statute, but failed to notify the Office of Protection and

Advocacy for Persons with Disabilities of the proposed discharge..

6. 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.
7. The Facility failed to establish a discharge plan that was developed by the Resident's physician or by the Facility's medical director.

DISCUSSION

After reviewing the evidence and testimony presented at this hearing, I find that the Facility may not discharge the Resident because his personal physician or the medical director in conjunction with the nursing director, social worker of other health care professional did not develop the discharge plan. The plan was signed by the Facility's Administrator, RN and Co-director of Social Services, none of whom are physicians.

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] 2018, the Facility will submit to OLCRAH proof of compliance with this order.

**Roberta Gould
Hearing Officer**

Cc: Desiree Pina, LTC Ombudsman Program, DSS, Central Office
Donna Ortelle, Facility Licensing and Investigations Section, DPH
[REDACTED], Conservator of Resident

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.