

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

[REDACTED], 2019
Signature Confirmation

[REDACTED]

Request # 133450

NOTICE OF DECISION
PARTY

[REDACTED]

[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], 2018, [REDACTED] (the "Facility") issued a Notice of Emergency Transfer to a Hospital and/or Therapeutic Leave notice to [REDACTED] (the "Appellant"), indicating its intent to involuntarily discharge the Appellant to the [REDACTED], 2018 due to urgent medical needs.

On [REDACTED] 2018, the Appellant requested an administrative hearing to contest the Facility's proposed discharge.

On [REDACTED] 2018, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing at the Facility for [REDACTED] 2019.

On [REDACTED], 2019, in accordance with Connecticut General Statutes, sections 19a-535 and 4-176e to 4-184, inclusive, OLCRAH held an administrative hearing to address the Facility's intent to discharge the Appellant. The following individuals were present at the hearing:

[REDACTED], Appellant
[REDACTED], Social Worker, [REDACTED]
[REDACTED], Administrator, [REDACTED]
[REDACTED], Director of Nursing, [REDACTED]
[REDACTED], Manager of Station 4, [REDACTED]

Carla Hardy, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Facility acted in accordance with state law when it proposed to involuntary transfer the Appellant to [REDACTED].

FINDINGS OF FACT

1. On [REDACTED], 2016, the Appellant was admitted to the [REDACTED] for short-term stay. (Appellant's Testimony; Appellant's Exhibit C: Hearing Decision, [REDACTED] 18)
2. On [REDACTED], 2017, ASCEND approved the Facility's request for long-term care for the Appellant. (Exhibit C)
3. The Appellant has a history of breach of peace incidents at the Facility. (Appellant's Exhibit B: Misdemeanor Summons and Complaint, [REDACTED]/18; [REDACTED]/18; [REDACTED])
4. The Appellant has refused to sign Behavior Contracts addressing his behavior. (Exhibit 2: Behavior Contract, [REDACTED]/17; Exhibit 3: Behavior Contract, [REDACTED]/18)
5. On [REDACTED], 2018, the Appellant was verbally assaultive and physically aggressive towards staff members. He banged his walker on the floor in a violent manner and was unable to be redirected. (Exhibit 1: Physician's Emergency Certificate For No more Than 15 Days Care and Treatment in a Hospital for Psychiatric Disabilities)
6. The Appellant's diagnoses include Borderline Personality Disorder, Delusional Disorder and Anxiety Disorder. (Exhibit 1)
7. On [REDACTED], 2018, the Appellant was transferred to the [REDACTED] for a psychiatric evaluation. He remained at the hospital for 1.5 days. (Appellant's Testimony)
8. The Facility transferred the Appellant the [REDACTED] to get psychiatric clearance which was required for admission to [REDACTED]. (Facility's Testimony)
9. On [REDACTED], 2018, the Appellant was discharged from the [REDACTED]. He was sent to the Facility but was not readmitted. He was transferred to [REDACTED] this day. (Facility's Testimony)
10. The Appellant required a higher level of care not available at the Facility. [REDACTED] [REDACTED] has an inpatient acute geriatric psychiatric program. (Facility's Testimony)

11. The Appellant required adjustments to his current medications. (Facility's Testimony)
12. On [REDACTED], 2018, the Facility informed the Appellant in writing that he was being transferred to the [REDACTED]. (Appellant's Exhibit A: Notice of Emergency Transfer to a Hospital and/or Therapeutic Leave, [REDACTED]/18)
13. The Appellant remained at [REDACTED] from [REDACTED], 2018 through [REDACTED], 2018. (Facility's Testimony)
14. On [REDACTED], 2018, the Appellant was readmitted to [REDACTED]. (Appellant's Testimony, Facility's Testimony)
15. The Appellant's transfer to [REDACTED] was temporary. (Appellant's Testimony; Facility's Testimony)
16. The Facility is not proposing to transfer or discharge the Appellant. (Facility's Testimony)
17. A written discharge plan was not prepared by the Facility. (Hearing Record)
18. The issuance of this decision is timely under Connecticut General Statutes 17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Appellant requested an administrative hearing on [REDACTED], 2018. Therefore, this decision is due not later than [REDACTED], 2019.

CONCLUSIONS OF LAW

1. Section 19a-535 (h) (1) of the Connecticut General Statutes ("CGS") authorizes the Commissioner of Social Services or the commissioner's designee to hold a hearing to determine whether a transfer or discharge is being affected in accordance with this section.
2. Section 19a-535(a) of the CGS 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 noninstitutional 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 CGS 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, a physician shall document the basis for transfer or discharge in the resident's medical record. In each case where the welfare, health or safety of the resident is concerned the documentation shall be by the resident's physician. A facility which is part of a continuing care facility which guarantees life care for its residents may transfer or discharge (1) a self-pay resident who is a member of the continuing care community and who has intentionally transferred assets in a sum which will render the resident unable to pay the costs of facility care in accordance with the contract between the resident and the facility, or (2) a self-pay resident who is not a member of the continuing care community and who has intentionally transferred assets in a sum which will render the resident unable to pay the costs of a total of forty-two months of facility care from the date of initial admission to the facility.
4. Section 19a-535(c)(1) of the CGS provides that before effecting any transfer or discharge of a resident from the facility, the facility shall notify, in writing, the resident and the 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.

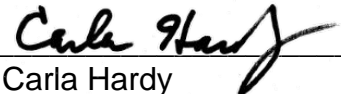
5. The Appellant's transfer to the [REDACTED] on [REDACTED], 2018 was for an emergency purpose. The Facility was not obligated to provide the Appellant with a 30 day notice.
6. The Facility failed to give the Appellant any notification of his transfer to [REDACTED].
7. CGS §19a-535(e) provides that except 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 services that 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 or the resident's guardian or conservator, if any, or legally liable relative or other responsible party, if known.
8. The Facility's transfer of the Appellant from the [REDACTED] to [REDACTED], albeit temporary and short-term, did not comply with state statute as the Facility did not meet the statutory requirement of formulating 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, and an outline of care and services that the resident would receive upon the transfer.

DISCUSSION

The Appellant's transfer to the [REDACTED] on [REDACTED], 2018 and then subsequently to [REDACTED] was not intended to be a permanent placement for the Appellant. The Appellant was expected to return to the Facility after receiving geriatric psychiatric care from [REDACTED] which was not available at the Facility. Although the transfer was temporary, the Facility did not give the Appellant a written discharge plan. He returned to the Facility on [REDACTED] 2018. The Facility is not proposing to transfer or discharge the Appellant. There is no remedy that this Hearing Officer can offer the Appellant.

DECISION

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



Carla Hardy
Hearing Officer

Pc: Desiree Pina, Regional Office Ombudsman, Department of Social Services, Central Office
Donna Ortelle, Connecticut Department of Public Health,
410 Capitol Avenue, MS# 12HSR, P.O. Box 340308, Hartford, CT 06134

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, law, and 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, if 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.