

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
25 SIGOURNEY STREET  
HARTFORD, CT 06106-5033

██████████, 2019  
Signature Confirmation Mail

Client ID # ██████████  
Request # ██████████

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
██████████

**PROCEDURAL BACKGROUND**

On ██████████ 2018, ██████████, a skilled nursing facility, sent ██████████ (the "Appellant") a Notice of Intent to Discharge from its care effective ██████████ 2018 because he no longer requires the care and services of a nursing facility due to improved health.

On ██████████, 2018, the Appellant requested an administrative hearing to contest the decision to discharge him from the facility.

On ██████████ 2019 the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a Notice scheduling the administrative hearing for ██████████ 2019.

On ██████████ 5, 2019, the Appellant requested a continuance to secure legal counsel and it was granted.

On ██████████, 2019, OLCRAH issued a Notice scheduling the administrative hearing for ██████████, 2019.

On ██████████ 2019, the Appellant requested a re-scheduled administrative hearing and it was granted.

On ██████████, 2019, the Appellant waived his right to a timely hearing decision under section 17b-61(a) of the Connecticut General statutes.

On [REDACTED] 2019, OLCRAH issued a Notice scheduling the administrative hearing for [REDACTED], 2019.

On [REDACTED] 2019, the Appellant's attorney requested a continuance and it was granted.

On [REDACTED] 2019, OLCRAH issued a final reschedule Notice scheduling the administrative hearing for [REDACTED] 2019.

On [REDACTED] 2019, in accordance with sections 19a-535, 17b-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  
Atty. [REDACTED], Appellant's attorney N.H. Legal Assistance Assoc. Inc.  
Daniel Brencher, Administrator, [REDACTED]  
Marley West, Dir. of Nursing, [REDACTED]  
Deberal Castillo, Dir. of Social Services, [REDACTED]  
Maricel Flores, Physical Therapist, [REDACTED]  
Archana Mahajan, Occupational Therapist, [REDACTED]  
Almelinda McLeod, Fair Hearing Officer, FHO

The hearing record was held open for the submission of attorney briefs. The hearing record closed on [REDACTED] 2019.

On [REDACTED] 2019, the facility administrator and counsel for the Appellant requested that the matter regarding his discharge be placed in abeyance as they try to resolve the issue. Both parties also waived any claim against a decision that is untimely as result of this request.

The request was granted for a period of two weeks to expire on [REDACTED] 2019.

On [REDACTED] 2019, the facility administrator requested two more weeks for the decision to be held in abeyance.

On [REDACTED] 2019, the facility administrator requested to have his request for the abeyance to be withdrawn and requested a decision to be issued.

On [REDACTED] 2019, this FHO forwarded this message to the Appellant's attorney.

The Appellant's attorney did not respond.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether [REDACTED] acted in accordance with state law when it proposed to involuntarily discharge the Resident from the facility because he no longer needed the care and services of a skilled nursing facility due to improved health.

### **FINDINGS OF FACT (FOF)**

1. The Appellant was admitted into the [REDACTED] Facility on [REDACTED], 2016. (Hearing record).
2. The Appellant is age [REDACTED], date of birth [REDACTED] [REDACTED] and he is active title XIX Medicaid. (Hearing record)
3. The Appellants admitting diagnosis were hypertension, hemiplegia and hemiparesis due to a cerebral infarction affecting his ride side, depression, fever, anxiety, peripheral vascular angioplasty and peripheral vascular disease, diarrhea and constipation, chronic back pain and other abnormalities of gait and mobility. (Exhibit 5 & Exhibit D)
4. The Appellant was fully oriented to all spheres (self, place, time and situation); had no cognitive deficits and no problems with vision or behaviors. (Exhibit 3B and hearing record)
5. Effective [REDACTED] 2017, Ascend approved Long term Care based on the information they had at the time; which included his admitting diagnosis and his need for supervision with 3 activities of daily living (“ADL”) bathing, dressing and eating/feeding as well minimal assistance with meal preparation. (Exhibit 3B)
6. Ascend is the Department's contractor for skilled nursing home level of care. (Hearing record)
7. The ADL’s measures include bathing, dressing, eating, toileting, continence, transferring and mobility. (Hearing record)
8. On [REDACTED] 2017, Ascend noted that if the Appellants medical condition improved to the point that he can safely return to the community, the facility should help with the discharge planning with the appropriate support services. (Exhibit 3B)
9. The Appellant does not have a personal physician; he has been treated by the facility’s medical director, Dr. [REDACTED] and his assistant medical director, Dr. [REDACTED]. (Appellant testimony)

10. The Appellant applied for money follows the person; however became ineligible due to issues of cooperation with the application process. He is in the process of re-applying with Money follows the person. (Appellant and Facility testimony)
11. The Appellant uses a rollator walker to get around the facility; which has been beneficial because he can sit and walk and stop whenever he wants. (Appellant testimony)
12. The Appellant is independent in all Activities of Daily Living ("ADL's) including eating, bathing, toileting, mobility and transferring from his bed. (Facility's testimony, Exhibit 9)
13. The Appellant needs some assistance with dressing, specifically putting on his pants and shoes and he is wary of showering because of slippery conditions; he bathes independently. (Appellant's testimony)
14. The facility's CNA- points of care history documents from [REDACTED] 2018 to [REDACTED] 2018 pertaining to dressing indicated (except when the activity did not occur) that on one occasion, the Appellant needed supervision and on 2 occasions, set-up was needed, otherwise he performed this task independently. (Exhibit 9)
15. The facility is currently administering his medications while he remains at the facility. He is very familiar with his medication and thus does not need medical set up assistance but the use of a pill box to make things simpler for him. (Facility testimony)
16. The facility determined that based on the Appellant's independence in his ADL's; his medical records and his progress notes, the Appellant no longer needed the services of a skilled nursing facility and can function independently in the community. (Hearing record)
17. On [REDACTED], 2018, the facility issued a 30 day notice of discharge to the Appellant informing him that he was being discharged because his health improved and he no longer required skilled nursing in a facility. (Exhibit 1)
18. The notice issued provided the name, address, and telephone for the State Long-Term Care Ombudsman. (Exhibit 1)
19. The Appellant contacted the Ombudsman. (Hearing record)
20. The discharge notice provided the name, address and telephone number of The Office of Protection and Advocacy for Persons with Disabilities; the

former nonprofit entity designated to provide protection and advocacy. (Exhibit 1)

21. As of [REDACTED] 2017, the nonprofit entity designated by the Governor to provide protection and advocacy for a resident alleged to be mentally ill or developmentally disabled is Disabilities Rights Connecticut, Inc. (Exhibit E)
22. There is no evidence that the Appellant was mentally ill or developmentally disabled. See FOF #4. (Hearing record)
23. The Discharge plan proposed to discharge the Appellant to [REDACTED] [REDACTED] because he would frequently visit with friends on independent leaves of absences (LOA) from the facility and was familiar with the area. (Exhibit 1 and Exhibit B)
24. The Appellant does not have any family members in the area or any family involvement with his care. (Hearing record)
25. The Appellant has refused this location as he feels the area is unsafe due to drugs and prostitution activities. (Appellant testimony)
26. The facility is willing to work with the Appellant to find a new location that is acceptable to him. (Facility testimony)
27. The discharge plan outlines the care and services to be provided. It proposed to set up a physician's appointment for an assessment and follow-up within one week of the discharge, arrange for a pain management clinic to monitor and prescribe narcotic pain medications and help with home care in the community. However, he would need a location for the Appellant so that home care can follow him in the community. (Exhibit 1 and Exhibit C and hearing record)
28. The Appellant did not want to participate in the discharge plan. (Hearing record)
29. The written discharge plan was discussed and developed by the Medical Director in conjunction with the social worker, nursing director and the facility administrator. The discharge plan was signed by the Medical director, nursing director and the facility administrator. (Exhibit 1 and hearing record)
30. On [REDACTED], 2019, the Appellant requested an administrative hearing within 20 days to contest the Facility's intent to discharge him to the [REDACTED] [REDACTED], CT. (Hearing record)

### **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) (4) of the CGS provides “discharge” means the movement of a resident from a facility to a non-institutional setting.

3. CGS provides:

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.

[Section 19a-535 (b)]

4. CGS provides:

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 nonprofit entity designated by the governor in accordance with section 46a-10b to serve as the Connecticut protection and advocacy system. 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.

[Section 19a-535(c) (1)]

5. **The discharge notice provided the name, address and telephone number to the former organization [Office of Protection and advocacy for persons with disabilities]; Instead of the current nonprofit entity designated by the governor [Disabilities Rights Connecticut] for those who are mentally ill or developmentally disabled.**

**Though the notice had inaccurate information, the Appellant did communicate with the Ombudsman and retained legal representation prior to this hearing. Since there is no evidence that the Appellant is either mentally ill or developmentally disabled; there was no substantive effect on the Appellant.**

**The facility correctly gave the Appellant at least 30 days' notice of the proposed discharge date.**

6. CGS provides:

The resident may initiate an appeal by submitting a written request to the Commissioner of Social Services not later than sixty (60) calendar days after the facility issues the notice of the proposed transfer or discharge, except as provided in subsection (h) of this section. In order to stay a proposed transfer or discharge, the resident must initiate an appeal not later than twenty days (20) after the date the resident receives the notice of proposed transfer or discharge from the facility.

[Section 19a-535 (c) (2)]

CGS provides:

A resident who receives a notice from the Dept. of Social Services or its agent that the resident is no longer in need of the level of care provided by a facility and that, consequently, the resident's coverage for facility care will end, may request a hearing in accordance with section 17b-60. If the resident requests a hearing prior to the date that Medicaid coverage for facility care is to end, Medicaid coverage shall continue pending the outcome of the hearing.

[Section 19a-535 (h) (7) (i)]

**The Appellant requested his administrative appeal within 60 calendar days after receiving the proposed discharge notice from the facility. As a result, the Appellant effectively stayed the proposed discharge because he initiated his appeal request within 20 days after he received the notice of the proposed discharge. His Medicaid coverage continues pending the results of this hearing.**

7. CGS provides:

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 advanced practice registered nurse 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 that 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 or advanced practice registered nurse 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.



[CGS § 19a-535 (e)]

8. CGS provides that a facility shall be responsible for assisting the resident in finding appropriate placement.

**The facility is willing to work with the Appellant to find another location acceptable to the Appellant; however the Appellant had chosen not to participate in his discharge plan.**

**The facility's proposal to discharge the Appellant complies with state statute as the facility's collaborated in formulating a discharge plan to include a written evaluation of the effects of the discharge on the resident, a statement of action taken to minimize such effects and outline of care and services that the resident would receive upon discharge.**

**The facility correctly provided the Appellant with a discharge plan.**

### **DISCUSSION**

The facility had some organizational changes which prompted an evaluation of all the residents in their care. In their evaluation of the Appellant's documents, they questioned whether the LOC determination of ██████████ 2017 was an error; however, the fact remains he was approved for LOC on ██████████ 2017. Counsel for the Appellant argued that because the facility questioned the Appellant's LOC approval back to ██████████ 2017, the facility was inappropriately billing Medicaid. This argument is irrelevant for 2 reasons. First, the Appellant continued to get services from the skilled nursing facility while he resided at the facility; thus the facility is entitled to get paid for services rendered; and secondly, this issue has nothing to do with the issue of involuntary discharge due to improved health.

The evidence shows that the facility had charted his progression and provided a discharge plan in accordance with the regulations, despite the Appellant's refusal to participate.

Since the Appellant's request for this hearing, he suffered a fall in ██████████ of 2019 on the facility grounds. There is no evidence to suggest that this fall had substantially changed his need for skilled nursing as the evidence shows the Appellant continues to be independent in all his ADL's and continues to have frequent independent LOA from the facility.

The facilities determination to discharge the Appellant because his health improved is upheld.

**DECISION**

The Appellant's appeal is DENIED.

  
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Almelinda McLeod  
Hearing Officer

CC:

Donna Ortelle, Connecticut Dept. of Public Health, Hartford, CT. 06134

Desiree Pina, Regional Office Ombudsman, Central Office

Daniel Brencher, [REDACTED]

Attorney [REDACTED], [REDACTED]

### **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.