

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

██████████ 2019
SIGNATURE CONFIRMATION

REQUEST #137482

████████████████████
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NOTICE OF DECISION

PARTIES

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PROCEDURAL BACKGROUND

On ██████████ 2019, ██████████ (the "Facility") issued a Notice of Discharge to ██████████ (the "Appellant") stating its intent to involuntarily discharge the Appellant on ██████████ 2019 to the shelter of her choice as the Appellant no longer requires nursing home services due to improved health.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the Facility's Notice of Discharge and to stay the proposed discharge.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative ("OLCRAH") issued a Notice of Administrative Hearing scheduling a hearing at the Facility for ██████████ 2019, @ 10:00 AM.

On ██████████ 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 involuntarily discharge the Appellant.

The following individuals were present at the hearing:

- ████████████████████, the Appellant
- ████████████████████ Appellant's Daughter/Witness
- ████████████████████ Administrator
- ████████████████████, Director of Nursing

██████████, Assistant Director of Nursing
██████████, Director of Social Work
██████████, Director of Recreation
██████████ APRN
██████████, Director of Rehabilitation
██████████, Director of Therapy
██████████, Coordinator
Hernold C. Linton, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Facility's proposal to discharge the Appellant due to improved health is correct, and complies with the statutory requirements.

FINDINGS OF FACT

1. On ██████████ 2018, ██████████ admitted the Appellant for short-term rehabilitative care. (Interdisciplinary Discharge Summary)
2. The Appellant receives Medicaid to pay for the cost of her stay. (Appellant's testimony)
3. On ██████████ 2018, the Appellant was approved by Medicaid for a short-term nursing facility stay of 120 days; the approval was later extended through ██████████ 2019. (Facility Exhibit #4: ██████████ 18 PASRR Findings Report; Testimony of Facility's Rep.)
4. On ██████████ 2019, the Facility issued a Notice of Discharge to the Appellant proposing to discharge the Appellant on ██████████ 2019 to the shelter of her choice. ██████████ 19 Notice of Discharge)
5. The Appellant resided independently in the community on her own before being evicted from her apartment. (Appellant's testimony)
6. The Appellant's relatives and extended family reside in the geographic area. (Appellant's testimony)
7. The Appellant requires set-up to complete all of her activities of daily living tasks. (Facility Exhibit #1: Interdisciplinary Discharge Summary)
8. The Appellant uses an oxygen concentrator, a CPAP machine, and an inhaler to treat her asthma related symptoms. (Appellant's testimony; Facility Exhibit #1)

9. The Facility described the Appellant as fully independent and no longer needing skilled nursing care due to improved health. (Facility Exhibit #1)
10. The Appellant would like to return to the community with support services, and an apartment that is approved for Section 8 housing subsidy. (Appellant's testimony; Appellant's Exhibit A; Facility Exhibit #1)
11. The Facility intended to discharge the Appellant on [REDACTED] 2019 to the shelter of her choice. [REDACTED] 19 Notice of Discharge)
12. The Appellant will need homecare services upon her being discharged to the community. (Facility Exhibit #1)
13. The Facility will arrange for homecare services to be in place to meet the Appellant's needs in the community upon her being discharged. (Facility Exhibit #1)
14. The Appellant's psychiatric history is not clearly documented as at present she is not on psychotropic medications. (Facility Exhibit #4)
15. The Appellant's functional status indicates that her medical condition is currently stable. (Facility Exhibit #1)
16. The Appellant no longer needs the services of the Facility due to her improved health. (Facility Exhibit #1)
17. The Appellant does not have an uncontrolled chronic medical condition requiring continuous skilled nursing services and substantial assistance with personal care on a daily basis. (Facility Exhibit #1; Facility Exhibit #4)
18. The Facility did not develop a discharge plan and provide a copy of the plan to the Appellant and her representative. (Appellant's testimony)
19. The Interdisciplinary Discharge Summary was developed by the administrator, physician, and director of nursing services very shortly after her admission. (Facility Exhibit #1)
20. The Interdisciplinary Discharge Summary does not have the signature of the Appellant or her representative. (Facility Exhibit #1)
21. The Notice of Discharge did not specify the location to which the Appellant is to be discharged. [REDACTED] 19 Notice of Discharge)
22. The issuance of this hearing decision is timely under Connecticut General Statutes 19a-535(h)(1) which requires that a decision be issued not later than thirty days

after the termination of the hearing or not later than sixty days after the date of the hearing request, whichever occurs sooner. Sixty days from [REDACTED] 2019 is [REDACTED] 2019, and thirty days from [REDACTED] 2019 is [REDACTED] 2019. Therefore, this hearing decision is due no later than [REDACTED] 2019.

CONCLUSIONS OF LAW

1. Conn. Gen. Stat. § 19a-535(h)(1) authorizes the Commissioner of Social Services to hold a hearing to determine whether the transfer or discharge is being affected in accordance with this section. Conn. Gen. Stat. § 19a-535(h)(1)
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.

Because the Appellant is independent with her functional activities and only requires minimal assistance with her pm activities, the Appellant no longer needs nursing services due to improved health; therefore, there is a legal basis upon which the Facility may seek to discharge the Appellant.

4. Conn. Gen. Stats. § 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, and the right to appeal the proposed transfer or discharge.

The Facility's Notice of Discharge fails to specify the location to which the Appellant is to be transferred; therefore, it is not a valid notice.

5. 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 patient or the medical director in conjunction with the nursing director, social worker or other health care provider.

Because the discharge summary does not have the signature of the Appellant or her representative in conjunction with the signatures of the nursing director, social worker or other health care provider, the discharge summary is not in compliance with the statutory guidelines.

The Facility has failed to comply with the provisions of Conn. Gen. Stat. § 19a-535 before effecting the proposed discharge of the Appellant.

DECISION

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

ORDER

The Facility shall not discharge the Appellant until proper notice is provided to the Appellant and her representative, and a discharge plan that fully complies with the statutory guidelines has been developed.



Hernold C. Linton
Hearing Officer

Cc: [REDACTED] Administrator,
[REDACTED], West Haven, CT 06516

Dan S. Lerman, Regional Ombudsman
370 James Street, New H

Desiree C. Pina, LTC Ombudsman Program,
Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105

Donna Ortelle, Connecticut Department of Public Health
410 Capitol Avenue, MS#12HSR, P.O. Box 340308, Hartford, CT 06134-0308

[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 Administrative Hearings and Appeals, 55 Farmington Avenue, Hartford, CT 06105-3725.

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.