

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

Client ID # ██████████
Request ID # 139066

NOTICE OF DECISION

PARTY

██████████

██████████

PROCEDURAL BACKGROUND

On ██████████, 2019, the ██████████ (the Facility”), a skilled nursing facility, issued a 30 Day Notice of Intent to Discharge, to ██████████ (the “Appellant”) proposing to involuntarily discharge the Appellant from its care within 30 days of his receipt of the letter due to having an unpaid balance of more than 15 days of the per diem facility room rate.

On ██████████, 2019, the Appellant requested an administrative hearing to contest the Facility’s proposed discharge.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling an administrative hearing at the Facility for ██████████ 2019.

On ██████████, 2019, in accordance with Connecticut General Statutes, sections 19a-535 and 4-176e to 4-184, inclusive, OLCRAH held an administrative hearing at ██████████.

The following individuals were present at the hearing:

██████████, Appellant/Resident
 ██████████, Appellant's Spouse
 ██████████, Administrator
 ██████████, Business Office Manager
 ██████████, Social Worker
 ██████████
 Shelley Starr, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Facility acted in accordance with state law when it proposed to involuntarily discharge the Appellant from the Facility due to non-payment.

FINDINGS OF FACT

1. On ██████████, 2018, the Appellant was admitted to the ██████████ skilled level of care unit from ██████████, for wound care and weakness. (Administrator's Testimony)
2. Prior to his hospitalization, the Appellant resided with his wife at the ██████████. (Administrator's Testimony; Spouses' Testimony)
3. On ██████████, 2019, the Facility issued a Notice of Intent to Discharge to the Appellant, indicating that he would be discharged home for non-payment or arrearage of more than fifteen days of the per diem facility room rate. The notice was also sent to the Appellant's ██████████. (Exhibit 1: Notice of Discharge, dated ██████████, 2019)
4. On ██████████, 2019, the Appellant requested an administrative hearing to contest the Facility's intent to discharge him for non-payment. (Exhibit 1: Notice of Discharge and Hearing Request; Hearing Record)
5. The Appellant, with the help of his ██████████, applied for Medicaid in ██████████ of 2018, and was denied for failing to provide information to establish eligibility. (Administrator's Testimony; Business Officer Manager's Testimony; Hearing Record)
6. The Appellant is not active on Medicaid and has not followed through with a new Medicaid application since his denial. He is a self-pay resident. (Administrator's Testimony; Business Office Manager's Testimony; Hearing Record)
7. The Appellant owes the facility \$██████████, for the period of ██████████ 2019, through ██████████, 2019. (Business Office Manager's Testimony)

8. A written discharge plan has not been developed by the personal physician, advanced practice registered nurse of the resident or the medical director in conjunction with the nursing director, social worker or other health care provider. (Hearing Record; Administrator's Testimony)
9. The Facility has not developed a discharge plan containing arrangements for the care and services which the Appellant will receive upon discharge, the effects of the discharge, and a statement of action to minimize the effects. (Hearing Record; Administrator's Testimony; Social Worker's Testimony)
10. The issuance of this 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 (hearing request) is [REDACTED] 2019, and thirty days from [REDACTED], 2019 (date hearing held) is [REDACTED], 2019. This decision is due not later than [REDACTED], 2019, and is, therefore timely.

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 Connecticut General Statutes provides that the term "discharge" means the movement of a resident from a facility to a non-institutional setting.
3. Section 19a-535 (a)(5) provides in part that the term "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.

The Appellant is not receiving state or municipal assistance to pay for the cost of care at [REDACTED] and is not pending a Medicaid eligibility determination from the Department.

The Appellant is a self-pay resident and has an arrearage in excess of more than fifteen days of the per diem facility room rate.

4. Section 19a-535 (b) of the Connecticut General Statutes 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.

5. Section 19a-535(c)(1) of the Connecticut General Statutes. 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 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.

The Facility provided the Appellant and his responsible party with at least 30 days notice of the proposed discharge date and required information in accordance with State Statute.

6. Section 19a-535(e) of the Connecticut General Statutes 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 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 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 services 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 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.

The Facility's proposal to discharge the Appellant does not comply with state statute as the Facility has not met the statutory requirement of formulating a discharge plan developed and approved by the Facility's medical director, the Appellant's personal physician or advanced practice registered nurse.

DISCUSSION

The Facility did not present a written discharge plan as required by Connecticut General Statutes § 19a-535(e). The Statute provides that no resident shall be transferred or discharged from a facility unless a discharge plan has been developed by the personal physician 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. Since the Facility did not develop a written discharge plan that is in compliance with the state statutes, the Facility may not discharge the Appellant based on the notice sent on [REDACTED], 2019.

DECISION

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

ORDER

1. The Facility shall rescind its proposal to involuntarily discharge the Appellant from its care.
2. The Facility shall submit to the undersigned proof of compliance with this order no later than [REDACTED] 2019.


Shelley Starr
Hearing Officer

Cc: Donna Ortelle, Connecticut Department of Public Health
Desiree Pina, Office Ombudsman

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.