

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 # 140590

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2019, ██████████ (the "Facility") issued a notice to ██████████ (the "Appellant") proposing to involuntarily discharge the Appellant from its care within 30 days from the date of its notice.

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 Facility.

The following individuals were present at the hearing:

██████████, Appellant
██████████, Administrator, ██████████
██████████, Assistant Administrator, ██████████

[REDACTED], Social Worker, [REDACTED]
[REDACTED], Unit Manager [REDACTED]
[REDACTED], Director of Nurses, [REDACTED]
Shelley Starr, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Facility's proposal to involuntarily discharge the Appellant complies with all applicable laws.

FINDINGS OF FACT

1. On [REDACTED], 2018, the Appellant was admitted to [REDACTED] the "Facility") from the [REDACTED], with a primary medical diagnosis of COPD, Neuropathy, and Fracture of the back. (Appellant's Testimony; Hearing Record)
2. The Appellant is [REDACTED] years old ([REDACTED]) and is a recipient of Husky Medicaid. (Appellant's Testimony)
3. [REDACTED] is a non-smoking facility that prohibits smoking or vaping of any substances and prohibits the use of alcohol and illegal substances or medications not prescribed. (Administrator's Testimony; Hearing Record; Exhibit 2: Contract signed [REDACTED], 2019)
4. Since the Appellant's admission to [REDACTED], the Appellant has incurred multiple documented facility policy violations threatening his health and safety or the health and safety of others. ([REDACTED] Exhibit 1: Notice of Intent to Discharge dated [REDACTED] 2019; Exhibit 2: [REDACTED]; Exhibit 3: [REDACTED] progress notes)
5. On [REDACTED] 2019, the Appellant signed an [REDACTED] of compliance outlining the facility policy to ensure his safety when residing in the facility as well as when he is out on leave, due to having multiple occasions of the Appellant not acting in the best interest of safety and due to instances of violating the facility policies. (Exhibit 2: [REDACTED] contract signed on [REDACTED], 2019; Hearing Record)
6. By signing and initialing the [REDACTED] which outlines the facility policies concerning alcoholic beverages, smoking and vaping, substances, medications including prescription, and contraband, the Appellant acknowledged that he read the facility contract of compliance, he understood them, and he agreed to abide by them. (Exhibit 2: [REDACTED] signed [REDACTED], 2019)

7. Since the Appellant's signing of the contract of compliance, the Appellant has continued to incur contract violations. (██████████ Testimony; Exhibit 1: Notice of Intent to Discharge; Exhibit 2: ██████████ signed ██████████ 2019; Exhibit 3: Progress Notes)
8. On ██████████, 2019, the Appellant was found to have been hiding a dose of Subutex, also known as Buprenorphine under ██████ sheet during medication administration. (Exhibit 1: Notice of Intent to discharge; ██████████ Testimony)
9. On ██████████ 2019, the Appellant was found with a used syringe in ██████ bathroom and was transported for a toxicology screen due to ██████ consumption of an illegal substance. (Exhibit 1: Notice of Intent to Discharge; Exhibit 3: Progress note: dated ██████████, 2019; ██████████ Testimony)
10. In addition, the Appellant was found to have alcohol in ██████ room, the discovery of the collection of 31 prescribed pills withheld by the Appellant by not swallowing the pills at the time of administration, and having angry outbursts including verbal threats which on one occasion this ██████, lead to calling the police for assistance. (██████████ Testimony; Appellant's Testimony; Hearing Record)
11. On ██████████, 2019, the Facility issued a 30 Day Involuntary Transfer/Discharge Notice (the "discharge notice") to the Appellant stating its intent to involuntarily discharge the Appellant on or following 30 days from the date of its notice due to facility violations affecting the health or safety of ██████████ and residents in the Facility. (Exhibit 1: Notice of Discharge dated ██████████, 2019)
12. On ██████████, 2019, the Appellant requested an administrative hearing to contest the Facility's intent to discharge him. (Hearing Record; Appellant's Hearing Request)
13. The Facility has determined a placement location for the Appellant in the event of a discharge. ██████████ Testimony)
14. The Facility has not prepared and presented a written discharge plan to the Appellant. (Hearing Record; ██████████ Testimony)
15. The Appellant utilizes a private physician at the ██████████, who is not aware of the proposed discharge. (Appellant's Testimony; Hearing Record)
16. The Appellant admits to breaking the rules and agrees with having committed the violations that resulted in the facility issuance of the 30- day Involuntary/Discharge notice. (Appellant's Testimony; Hearing Record)

CONCLUSIONS OF LAW

1. Section 19a-535 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to hold a hearing to determine whether the 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(c)(1) of the Connecticut General Statutes provides in part: 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 for good cause, that the resident may represent herself or himself 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 States 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 gave the Appellant at least 30 days notice of the proposed discharge and notified the Appellant in writing of the proposed discharge in accordance with section 19a-535(c)(1) of the Connecticut General Statutes.

4. Section 19a-535(b) provides in part 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 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 or an advanced practice registered nurse. In each case where the welfare, health or safety of the resident is concerned the documentation shall be by the resident's physician or the resident's advance practice registered nurse.

5. 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 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 the 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 did not develop a written discharge plan developed by the Appellant's personal physician, advanced practice registered nurse or the medical director in conjunction with the nursing director, social worker or other health care provider including the relevant factors affecting the Appellant's adjustment to the transfer, the care ■ will require and the measures to be taken to minimize the effect of an involuntary transfer.

The facility's action to discharge the Appellant is incorrect as the facility did not develop a discharge plan in accordance with the statutory guidelines.

DISCUSSION

The facility has initiated proceedings to discharge the Appellant from its care as the Appellant has failed to follow the facility's policies endangering [REDACTED] health and safety and the potential health and safety of other residents. The facility has documented that the Appellant has been non-compliant with the facility policies and has the grounds for initiating discharge proceedings.

State statute provides that no resident shall be transferred or discharged from a facility unless a discharge plan has 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. Therefore, since the facility did not develop a discharge plan, the facility may not discharge the Appellant based on the 30-day notice presented to the Appellant 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. No later than [REDACTED] 2019, the Facility shall submit to OLCRAH proof of compliance with this order.


Shelley Starr
Hearing Officer

pc: Donna Ortelle, Connecticut Department of Public Health
Desiree Pina, Connecticut State Long Term Care Ombudsman, Department of
Social Services

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.

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.