

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 # 143021

NOTICE OF DECISION

PARTY

██████████, Care Coordination  
██████████  
██████████

██████████, Administrator  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2019, ██████████ (the "facility") issued an Emergency Discharge Notice to ██████████ (the "Appellant") stating its intent to involuntarily discharge the Appellant immediately from the date of its notice as the safety or health of individuals in ██████████ would be endangered by the Appellant being there. The Appellant is currently a patient at the ██████████ (the "hospital")

On ██████████ 2019, the Appellant requested an administrative hearing to contest the facility's discharge.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing at ██████████ ██████████ 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 to address the facility's discharge of the Appellant.

The following individuals were present at the hearing:

[REDACTED] the Appellant  
[REDACTED], Administrator for the Facility  
[REDACTED], Facility Director of Nursing  
[REDACTED], Facility Director of Business Development  
[REDACTED], Hospital Physician's Assistant  
[REDACTED], Hospital Nurse  
[REDACTED], Hospital RN, Case Coordinator  
[REDACTED], Hospital Social Worker, Case Coordinator  
Thomas Monahan, Hearing Officer

The record remained open for the Appellant to review and reply to evidence presented at the hearing by the Facility and the Hospital. On [REDACTED], 2019, the record closed.

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Facility acted in accordance with state law when it discharged, involuntarily, the Appellant from the facility because the safety or health of individuals in the facility was endangered by the Appellant being there.

### **FINDINGS OF FACT**

1. On [REDACTED] 2018, the Appellant entered the facility. (Hearing record)
2. The Appellant's diagnoses at the time of Admission included chronic obstructive pulmonary disease, hypertension, and pneumonia, alcohol dependence with withdrawal, alcohol abuse, Hepatitis C, and major depressive disorder. (Exhibit A: Facility progress notes)
3. The Appellant is [REDACTED] years old (DOB [REDACTED]) and a Medicaid recipient. (Exhibit A: Facility progress notes, Exhibit E: Medical records)
4. The Appellant lost leave of absence privileges at the facility for concerns of risky behavior including alcohol abuse, and concern over obtaining illegal substances. He also was arrested on leave of absence for getting into a fight. (Exhibit A: Facility progress notes)
5. The Appellant petitioned and leave of absence privileges were reinstated. The conditions of reinstatement of privileges required that the Appellant not use alcohol or drugs other than those administered by the facility's nursing staff. He also agreed to continue with his treatment plan. He agreed to allow the facility to test his

blood and urine for his safety. (Exhibit A: Facility progress notes, Exhibit H: Signed agreement, ██████)

6. After signing the agreement the Appellant continued to defy the nursing staff and refused medications and treatments. (Exhibit A: Facility progress notes)
7. On ██████ 2019, the Appellant acknowledged drinking some beers while out of the facility. When he returned to the facility he caused significant damage to his room and injured himself breaking a window causing a laceration to his arm. (Hearing record, Exhibit A: Facility progress notes, Exhibit B: photographs of room damage)
8. The Appellant was verbally abusive to staff members throughout the ██████ 2019 incident and left the building before being stopped by paramedics and the police who were called by staff at the facility because they could not control him. (Hearing record, Exhibit A: Facility progress notes)
9. The Appellant has at times been belligerent towards staff at the facility. (Exhibit A: Facility progress notes)
10. Other residents at the facility are afraid of the Appellant. (Exhibit A: Facility progress notes with resident letter)
11. On ██████ 2019, the hospital admitted the Appellant after the incident at the facility. (Hearing record)
12. On ██████ 2019, the medical director at the facility recommended that the Appellant not be accepted back at the facility as it would be unsafe for the Appellant, the staff and other residents of the Facility. Exhibit D: Medical director progress note)
13. On ██████ 2019, doctor ██████ I wrote an order that the Appellant not be readmitted to the facility because the facility is not equipped to handle his care. (Exhibit D: Physicians letter)
14. The safety of other residents at the facility is endangered if the Appellant remains at the facility. (facts 6-13)
15. On ██████ 2019, the Facility issued an immediate Involuntary Transfer/Discharge Notice (the "discharge notice") to the Appellant stating its intent to involuntarily discharge the Appellant immediately as the safety or health of staff and residents at the facility would be endangered by the Appellant being there. (Appellant's Exhibit 1: Notice of Discharge, ██████/19)
16. On ██████ 2019, the Appellant requested an administrative hearing to contest the facility's immediate discharge. (Hearing record; Appellant's hearing request)

17. The Appellant is currently working with the Department of Social Services Money Follows the Person program and expects to move to an apartment. (Appellant's testimony)


### **CONCLUSIONS OF LAW**

1. Section 19a-535 (b) of the Connecticut General Statutes ("CGS") 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 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 non-payment 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.
2. CGS Section 19a-535(a)(6) provides that "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. CGS Section 19a-535(c) 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 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. 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 case notice shall be given as many days before the transfer or discharge is practicable.

4. Section 19a-535 (e) of the CGS provides that: Except in an emergency, (2) or in the case of transfer to a hospital, or (3) in the case of transfer into or out of a Medicare distinct part within the same institution, 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.
5. Section 19a-535(h)(4) provides that in an emergency the notice required pursuant to subsection (c) of this section shall be provided as soon as practicable. A resident who is transferred or discharged on an emergency basis or a resident who receives notice of such a transfer or discharge may contest the action by requesting a hearing in writing not later than twenty days after the date of receipt of the notice or not later than twenty days after the date of transfer or discharge, whichever is later, unless the resident demonstrates good cause for failing to request a hearing within the twenty-day period. A hearing shall be held in accordance with the requirements of the subsection not later than fifteen business days after the date of receipt of this request. The commissioner or the commissioner's designee, shall issue a decision not later than thirty days after the date on which the hearing record is closed.
6. The facility issued the immediate discharge notice because the Appellant was a threat to the safety of other residents at the facility.
7. Because the discharge was an emergency a discharge plan is not a requirement.
8. The facility's discharge of the Appellant complies with state statutes.

### **DECISION**

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

  
Thomas Monahan  
Hearing Officer

C: Donna Ortelle, Connecticut Department of Public Health  
Desiree Pina, LTC Ombudsman Program

### **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.