

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATION AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CONNECTICUT 06105

██████████ 2019
Signature Confirmation

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NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2019, ██████████ (the "facility"), a skilled nursing facility, issued a Notice of Intent to Discharge 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 for ██████████, 2019.

On ██████████ 2019, in accordance with Connecticut General Statutes § 19a-535 and § 4-176e to § 4-189, inclusive, OLCRAH held an administrative hearing at ██████████

██████████ individuals were present at the hearing:

████████████████████
████████████████████
████████████████████, Administrator, ██████████
████████████████████, Social Worker, ██████████
Thomas Monahan, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the facility acted in accordance with state law when it proposed to involuntarily discharge the Appellant from its care due to non-payment of services rendered.

FINDING OF FACTS

1. On [REDACTED], 2018, the facility admitted the Appellant and on [REDACTED], 2018, the facility discharged the Appellant to his home. The facility readmitted the Appellant from his home on [REDACTED], 2018, after a fall and a hospital emergency room visit. (Administrator's Testimony, POA's testimony)
2. Prior to his hospitalization and admission to the facility, the Appellant resided at his home residence in [REDACTED], Connecticut. (Appellant's testimony, POA's testimony)
3. Since his [REDACTED] 2018, admission, the Appellant has remained at the facility without any discharges. (POA's testimony, Administrator's testimony)
4. The Appellant has a diagnosis of brain cancer. He takes medication for seizures. At his residence, he suffered multiple falls. (Appellant's testimony, POA's testimony)
5. The Appellant is a Medicare beneficiary and also has private medical insurance. The facility received payment for the Appellant's initial stay from [REDACTED] 2018, through [REDACTED], 2018. (Administrator's testimony)
6. The Appellant has not made any payments towards the cost of care at the facility since his [REDACTED] insurance payments terminated. (Hearing record)
7. The Appellant has not paid the facility for the time period of [REDACTED] 2018, forward. The Appellant's balance currently owed to the facility is \$72,441.00. (Administrator's testimony)
8. As of the hearing date the Appellant has not applied for Medicaid assistance. (POA's testimony)
9. The closing on the sale of the Appellant's home is [REDACTED] 2019. (POA's testimony)

10. On [REDACTED], 2019, the facility issued a Notice of Intent to Discharge to the Resident for non-payment of an arrearage of more than fifteen days. The notice indicated that the Resident would be discharged to his home. (Appellant's Exhibit A: Notice of intent to discharge, [REDACTED]/19)
11. On [REDACTED], 2019, the Appellant requested an administrative hearing to contest the facility's intent to discharge him. (Appellant's Exhibit A: Notice of intent to discharge, hearing request, [REDACTED]/19)
12. The Appellant's home is no longer available as a discharge location. (Fact 9)
13. The facility has not developed a written discharge plan with the Appellant's physician or with the facility's Medical Director, Director of Nursing, and the Director of Social Services. (Hearing record)
14. 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, is [REDACTED], 2019 and thirty days from [REDACTED], 1, 2019, is [REDACTED], 2019. Therefore, this decision is due not later than [REDACTED], 2019.

CONCLUSION OF LAW

1. Section 19a-535(h)(1) 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 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(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, the basis for transfer or discharge shall be documented in the resident's medical record by a physician or the resident's 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 advanced practice registered nurse.
4. Section 19a-535(a)(5) of the Connecticut General Statutes provides in part that "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 Resident is a self-pay resident because he has not filed an application for Medicaid assistance with the Department.

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

As of [REDACTED], 2019, the Resident has a \$72,441.00 balance owed to the Facility for the period of [REDACTED], 2018, through [REDACTED], 2019.

5. Section 19a-535(c)(1) of the Connecticut General Statutes 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, 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 Office of Protection and Advocacy for Persons with Disabilities. 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 at least 30 days notice of the proposed discharge date and all other information as required by 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 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 service 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 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.
7. **The facility did not provide the Appellant, a discharge plan developed by the personal physician of the Appellant or the medical director in conjunction with the nursing director, social worker or other health care provider.**
8. **The facility's proposal to discharge the Appellant does not comply with state statutes.**

DECISION

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

ORDER

1. The facility shall rescind its proposal to involuntarily discharge the Appellant from its care.
2. Verification of compliance is due by [REDACTED], 2019


Thomas Monahan
Hearing Officer

C: Desiree Pina, Office Ombudsman
Donna Ortelle, Department of Public Health
[REDACTED], POA

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. 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/her 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.