

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 # ██████████
Case ID# ██████████
Request # 142229

NOTICE OF DECISION

PARTY

██████████
██████████
██████████

████████████████████
████████████████████
████████████████████

PROCEDURAL BACKGROUND

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

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, the Appellant requested to re-schedule the hearing because she did not receive notification of the scheduled hearing.

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

On [REDACTED], 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:

[REDACTED], Appellant

[REDACTED]
Shelley Starr, Hearing Officer

The hearing record was held open to the close of business, [REDACTED], 2019, to provide the opportunity for [REDACTED] to clarify if the Appellant's treating physician received the discharge notice/plan. On [REDACTED], 2019, the written clarification was provided. On [REDACTED] 2019, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Facility's proposal to involuntarily discharge the Appellant because the Appellant's behaviors are a risk to the safety and welfare of others are in accordance with all applicable laws.

FINDINGS OF FACT

1. On [REDACTED], 2016, the Appellant was admitted to [REDACTED] (the "Facility") from [REDACTED] Hospital, with a primary medical diagnosis of Renal Failure and Kidney Infection. (Director's Testimony; Appellant's Testimony; Exhibit B: Discharge Plan and Face Sheet)
2. The Appellant is [REDACTED] years old ([REDACTED]) and is a recipient of Husky Medicaid. (Appellant's Testimony)
3. [REDACTED] has a designated smoking area for residents, which allows smoking on the premises supervised by staff. Smoking times are limited and residents are not allowed to possess lighters, matches, cigarettes, tobacco, pipes or any smoking materials. A staff member distributes and lights cigarettes. Residents may not sell or share materials. (Exhibit D: Smoking Guidelines Contract signed by Appellant [REDACTED] 2019; [REDACTED] 2019; Director's Testimony)
4. Since the Appellant's admission to [REDACTED], the Appellant has incurred multiple facility policy violations concerning smoking and/or alcohol usage, some of which occurred on [REDACTED], 2017, [REDACTED] 2017, [REDACTED] 2017, [REDACTED] 2017, [REDACTED], 2018, and [REDACTED], 2019; threatening her welfare and safety or the welfare and safety of others. (Director's Testimony; Exhibit A: Notice of Intent to Discharge dated [REDACTED] 2019)

5. On [REDACTED], 2019, the Appellant reviewed with the facility, the Smoking Guidelines and Protocol and signed a Smoking Policy Agreement. (Exhibit D: [REDACTED] r Smoking Guidelines, Contract, and Protocol Agreement signed [REDACTED] 2019; Director's Testimony)
6. Since the Appellant's acknowledgment and signing of the Smoking Guidelines, Protocol and Smoking Policy Agreement on [REDACTED], 2019, the Appellant has continued to incur facility violations. (Director's Testimony; Exhibit A: Notice of Intent to Discharge; Exhibit D: [REDACTED] Contract signed [REDACTED], 2019)
7. On [REDACTED] 2019, the Facility conducted a search in the Appellant's room and found that the Appellant has possession of cigarettes, lighters, alcohol nips, prescription, and non-prescription medications. (Director's Testimony; Hearing Record)
8. On [REDACTED] 2019, the Appellant reviewed with the facility the Smoking Guidelines, Smoking Agreement, Smoking Protocol and Notification of Hazardous or Precautionary Items Education and signed the documents, acknowledging the facility policies. (Director's Testimony; Exhibit D: Smoking Guidelines, Smoking Agreement, Smoking Protocol, Notification of Hazardous or Precautionary Items Education signed [REDACTED] 2019; Hearing Record)
9. On [REDACTED], 2019, the Facility issued a Notice of Intent to Discharge (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 having possession of cigarettes, lighters, alcohol nips, prescription and non-prescription medications. Your behaviors place you and others in the facility at risk. (Exhibit A: Notice of Intent to Discharge dated [REDACTED] 2019)
10. On [REDACTED], 2019, the Facility issued an Involuntary Discharge Plan to the Appellant, signed and dated by the Administrator, Medical Director, Director of Nursing and Discharge Planner on [REDACTED] 2019. (Exhibit B: Involuntary Discharge Notice/Plan, signed [REDACTED], 2019; Director's Testimony; Hearing Record)
11. The Facility has determined a placement location for the Appellant at the [REDACTED] shelter in the event of the discharge. (Director's Testimony; Exhibit A: Notice of Intent to Discharge)
12. The Appellant utilizes a private physician, [REDACTED], who reviewed the involuntary discharge notice/plan and has no objections to the involuntary discharge. (Exhibit E: letter signed by [REDACTED] dated [REDACTED], 2019; Hearing Record)
13. The Appellant has family who can assist the Appellant, including her [REDACTED], who resides in [REDACTED], [REDACTED] and her [REDACTED] who resides in [REDACTED], [REDACTED] (Appellant's Testimony; Hearing Record)

14. The Appellant is independent with activities of daily living including, bathing, transferring, dressing, toileting and eating. She is mentally cognitive and does not need help with the administering or set up of medication and management. (Appellant's Testimony; Director's Testimony)
15. The Appellant utilizes a walker. She does not utilize any other durable medical equipment. (Appellant's Testimony; Hearing Record)
16. The Appellant is concerned about the proposed discharge to the [REDACTED] because of the use of drugs by the residents. (Appellant's Testimony)
17. The Appellant admits to breaking some of the rules and agrees with having committed some of 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(b) of the Connecticut General Statutes provides in part 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 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 advanced practice registered nurse.

The facility correctly determined the Appellant's violations of the facility's rules endangered her health and safety and the health and safety of the residents at the facility.

3. 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.
4. Section 19a-535(c) 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 correctly issued the Appellant a notice of the proposed discharge date and allowed at least 30 days notice of the proposed discharge.

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.

6. Section 19a-535(g) of the Connecticut General Statutes provides the facility shall be responsible for assisting the resident in finding an appropriate placement.

The Facility has met the statutory requirement of formulating a discharge plan not less than thirty days prior to the involuntary discharge. The plan has been provided to the Appellant's personal physician, who has no objections to the proposed discharge.

The plan includes the measures and services upon discharge to minimize any disruptive effects of the discharge and has been correctly signed by the facility Medical Director, Administrator, Director of Nursing and Discharge Planner.

The facility correctly complied with the statutory requirements for an involuntary discharge when on [REDACTED] 2019, it proposed to discharge the Appellant to a local shelter.


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 her 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. The Appellant's treating physician is aware of the issued involuntary discharge and has no objections. The facility correctly issued the Appellant proper notification and has complied with the requirements to discharge the Appellant based on the 30-day notice presented to the Appellant on [REDACTED] 2019.

DECISION

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


Shelly Starr
Hearing Officer

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