

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

[REDACTED], 2019
Signature Confirmation

Case ID # [REDACTED]
Client ID # [REDACTED]
Request # 143510

NOTICE OF DECISION

PARTY

[REDACTED]

[REDACTED], Administrator

[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2019, [REDACTED] (the "Facility") issued a letter proposing to involuntarily discharge [REDACTED] (the "Appellant"), from its care on [REDACTED] 2019, within 30 days of his receipt of the letter.

On [REDACTED] 2019, the Appellant requested an administrative hearing to contest the Facility's proposed discharge.

On [REDACTED] 2, 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for [REDACTED] 2019

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

The following individuals were present at the hearing:

[REDACTED], Appellant
 [REDACTED], Director of Social Services, [REDACTED]
 [REDACTED], Director of Nursing, [REDACTED]
 [REDACTED], Occupational Therapist, [REDACTED]
 [REDACTED], Occupational Therapist, [REDACTED]
 Patricia Jackowski, Registered Nurse, Community Nurse Coordinator, Department of Social Services
 Jaimie Feril, Registered Nurse, Ascend/Maximus (participated by telephone)
 Swati Sehgal, 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 discharge, involuntarily, the Appellant from the facility due to denial of nursing home approval for not meeting nursing home criteria.

FINDING OF FACTS

1. The Appellant is a [REDACTED]-year-old individual (D.O.B. [REDACTED]). (Appellant's testimony)
2. On [REDACTED] 2019, the Appellant entered the Facility for rehabilitation from [REDACTED] Hospital following a laparoscopic sigmoid colectomy and cardiopulmonary bypass coronary artery bypass. He was also admitted with diagnoses of coronary artery disease, anxiety disorder, massive anxiety attacks, arthritis, asthma, bipolar disorder, depressive disorder, hypertension, mood disorder, obsessive-compulsive disorder, sleep apnea, and suicidal attempt or threat from twenty years (Appellant's testimony, Exhibit 1: Resident Face Sheet)
3. At the Appellant's admission, the Facility received a short term approval from the Department of Social Services' contracted Medicaid authorization agency, Ascend Management Innovations. (Exhibit 1, Director of Social Service's testimony)
4. On [REDACTED] 2019, the Appellant was discharged from occupational Therapy after achieving the highest practical level. (Exhibit 9: Letter from Occupational Therapist and Physical Therapy Discharge Summary)
5. The Appellant receives medication management. He does not require hands-on assistance with his ADLs. (Appellant's testimony, Exhibit 3: Observation Detail List Report, Exhibit 5: Level of Care Report)

6. On [REDACTED] 2019 the Facility issued a 30 Day Notice of Intent to Discharge (the "discharge notice") to the Appellant stating its intent to involuntarily discharge the Appellant on [REDACTED] 2019, 30 days from the date of its notice as the resident no longer needs the services of the facility due to improved health and Ascend Management has determined that his Medicaid covered stay ends on [REDACTED], 2019. The notice states the Appellant will be discharged to a New Haven Inn in the New Haven area. The Notice further gave the Appellant information on his appeal rights. (Exhibit 10: Notice of Discharge with Discharge plan)
7. The Appellant is currently appealing the denial of Level of Care from Ascend. (Hearing Record)
8. On [REDACTED] 2019, with the Notice of Intent to Discharge, the Facility provided an Addendum to Discharge Plan signed by the Administrator, Director of Nursing, and Medical Director. The Discharge Plan states the Appellant will be offered a brief stay of three nights at the [REDACTED] Inn, The Facility will pay for three nights at the Inn. The Plan identified measures taken to minimize disruptive effects of the planned discharge and listed medical appointments with a physician along with mental health support at [REDACTED] in the community will be set up prior to discharge. Facility social work staff, and referral to community-based providers available to assist the Appellant with transition planning. (Exhibit 10)
9. 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], 2019, 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 (Conn. Gen. Stat.) 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. Conn. Gen. Stat. 19a-535(a)(4) provides that the term "discharge" means the movement of a resident from a facility to a non-institutional setting.
3. Conn. Gen. Stat. §19a-535(b) 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. Because Ascend management and the Facility determined the Appellant is no longer in need of the services of the Facility due to improved health, there is a legal basis upon which the Facility may seek to transfer the Appellant.
5. Conn. Gen. Stat. §19a-535(c)(1) 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.
6. The Facility correctly gave the Appellant at least 30-day notice of the proposed discharge date which included the effective date of the discharge, the reason for discharge, a location to which he would be discharged and his appeal rights.
7. 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 of 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.

8. The Facility's discharge plan was properly signed by the Facility's Administrator, Medical Director, Director of Nursing, and Director of Social Service's
9. The Facility's proposal to discharge the Appellant in accordance with state statutes and is upheld.

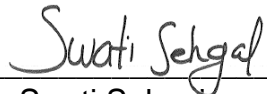
DISCUSSION

The Facility has initiated proceedings to discharge the Appellant from its care as the Appellant no longer requires the level of care and nursing services provided by the Facility. The Facility has provided the Appellant with a proper discharge notice. The Facility has met the statutory requirement of formulating a discharge plan to include a written evaluation of the effects of the transfer or discharge on the resident, a statement of the action taken to minimize such effects, and an outline of care and services that the resident would receive upon discharge.

The Appellant presented his concerns about his colostomy; he fears that he might contract the infection by living at a shelter. However, the Appellant stated that he is independent with his colostomy care. The Appellant was advised to follow up with his medical appointment in regards to colostomy. The Facility's proposal to discharge the Appellant is upheld.

DECISION

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


Swati Sehgal
Hearing Officer

CC: Desiree Pina, LTC Ombudsman Program, Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105

Donna Ortelle, Connecticut, Department of Public Health, 410 Capitol Avenue, MS#12HSR, P.O. Box 340308, Hartford, CT 06134-0308

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.