

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

██████████ 2020  
Signature Confirmation

Client ID # ██████████  
Request #153370

**NOTICE OF DECISION**

**PARTY**

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██████████  
██████████  
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**PROCEDURAL BACKGROUND**

On, ██████████ 3, 2020, ██████████ (the "facility") delivered a Notice of Emergency Transfer/Discharge to ██████████ (the "Appellant") informing her of their intention to transfer her from their care on ██████████ 2020, to another facility.

On ██████████ 2020, the Appellant requested an administrative hearing to contest the emergency transfer to another facility.

On ██████████, 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████, 2020.

On ██████████ 2020, in accordance with sections 19a-535 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held telephone administrative hearing.

The following individuals were present at the hearing:

[REDACTED], Appellant  
 [REDACTED], Appellant's Daughter and Conservator  
 [REDACTED]  
 Patricia Calderone, Long term Care Ombudsman Program, DSS  
 Swati Sehgal, Fair Hearing Officer

### STATEMENT OF THE ISSUE

The issue to be decided is whether the facility complied with the statutory requirements for an emergency transfer/discharge of a patient when it transferred the Appellant to another facility.

### FINDINGS OF FACT

1. On [REDACTED] 2019, the Appellant entered [REDACTED] (the "facility"), a skilled nursing facility. (Facility's Testimony, Appellant's Testimony)
2. The Appellant has a history of Dementia, anxiety disorder, history of fall, macular degeneration, vision loss, muscle weakness, anemia, hypertension, pain in shoulder and hip, gastroesophageal reflux disease. (Social Worker's Testimony)
3. On [REDACTED], 2019, The Appellant was sent to the emergency room for evaluation as the Facility staff was concerned for her safety. She was very upset, aggressive, kept on walking unassisted in the hallway with a cane refused to be assisted, kept on trying to exit the building. Many attempts were made to calm her down but were unable to do so. (Exhibit 6: Social Worker's Notes)
4. On [REDACTED], 2019, the Appellant assaulted the CNA staff at the facility by hitting her in the stomach. The Appellant walked out of the facility with her walker, the Appellant continued to walk towards the street with her walker. She was combative. The facility staff was unable to stop her. The 911 call was placed and the Appellant was transferred to the emergency room at [REDACTED] hospital escorted by Police. This transfer was made by police as they felt that she was a danger to herself. (Exhibit 6: Social worker's Notes)
5. On [REDACTED], 2019, an evaluation was completed by [REDACTED], at the facility and described the Appellant to be in a depressive state, she expressed suicidal wish a "plan to die". She wished to end her life by

withholding water from herself and walking into traffic. She also stated, "I wish to end my life and donate my body to [REDACTED]". (Exhibit 2: [REDACTED] Evaluation dated 1 [REDACTED]/19)

6. On [REDACTED] 2019, the Appellant left the facility and wheeled herself into the street, followed by the aide and the social worker. The Appellant was upset because she was not able to smoke at the facility, she was explained about the facility's no smoking rules and she was offered to contact her family who can come and take her out to have a cigarette. The Appellant refused to contact her family and she refused to go back inside. The Appellant got up from her wheelchair and started walking into the street while striking the social worker and the aide. (Exhibit 6)
7. On [REDACTED] 2020, another evaluation was done by [REDACTED], it states that the Appellant had become increasingly distraught, non-compliant, demanding, loud, aggressive and assaultive. She smacked an EMT on the side of her head/face and she was assaultive to her familiar nursing staff. [REDACTED] found her to be dangerous to herself and others. The Appellant was transferred to the emergency room at [REDACTED] hospital. (Exhibit 4: Dr. [REDACTED] Evaluation dated [REDACTED] and Appellant's Daughter's Testimony)
8. On [REDACTED] 2020, the Department of Public Health reportable event form was filed stating the nursing staff that was caring for the Appellant's roommate witnessed the Appellant getting up from her wheelchair and lowered her to the ground while they were trying close the door to provide privacy for the Appellant's roommate. The facility staff tried to get the Appellant up; she refused and started to violently kick the staff. The Appellant's family and the Police were notified. (Exhibit 7: Reportable Event Form)
9. On [REDACTED] 2020, a police report was filed, the Appellant did state that she was frustrated and became combative as a result. Later on [REDACTED] 2020, [REDACTED], one of the facility staff who had filed the police complaint arrived at the [REDACTED] Police Department to state the alleged assault. She provided a sworn written statement stating while she attempted to help the Appellant up from the ground, the Appellant was violently kicking her in the stomach. [REDACTED] was unable to disengage because that would have caused the Appellant significant injuries. Eventually, the Appellant was gently lowered to the ground because her kicks became very violent. After the end of her shift, [REDACTED] went to the hospital to seek treatment for her injuries. Pictures of bruises on [REDACTED]. [REDACTED] stomach were captured by Cruiser's camera. (Exhibit B: Police Report)

10. On [REDACTED], 2020, another evaluation was done by the facility's psychiatrist and the Appellant was deemed in need of acute psych stay because of her behavior. The facility does not have an acute psych ward; therefore the Appellant was referred to [REDACTED] where she could receive the appropriate care under the acute psych stay. (Director of Nursing's Testimony)
11. On [REDACTED] 2020, a Notice of Emergency Discharge was issued to the Appellant and the Appellant was transferred to [REDACTED]. The notice stated that the reason for discharge is that she is a danger to others including assaulting staff. (Exhibit 1: Notice of Emergency Discharge)

### **CONCLUSIONS OF LAW**

1. Section 19a-535(h)(1) of the Connecticut General Statutes authorizes the Commissioner of Social Services to hold a hearing to determine whether the transfer or discharge is being affected in accordance with this section. Conn. Gen. Stat. § 19a-535(h)(1)
2. Section 19a-535(a)(3) of the Connecticut General Statutes provides that the term "transfer" means the transfer of a resident from a facility to a separate facility, including a transfer into or out of a Medicare distinct part, but does not include the transfer of a resident from one bed to another bed within the same 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(a)(6) of the Connecticut General Statutes provides that the term "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.
5. 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. In each case where the welfare, health or safety of the resident is concerned the documentation shall be by the resident's physician.

6. Because of the Appellant's history and frequency of alleged assaults on the facility staff, she required assessments of her psychiatric needs. The facility provided the physician's emergency certificate stating that the Appellant is gravely disabled and is a danger to others. The report also stated that the Appellant requires immediate care and treatment in a hospital for psychiatric disabilities. Consequently, the facility correctly based its [REDACTED], 2020, transfer/discharge of the Appellant to the [REDACTED] on a Physician's Emergency Certificate ("PEC") after a psychiatric evaluation stemming from an assault on the facility staff.
7. Section 19a-535(c)(1) of the Connecticut General Statutes, states 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, and the right to appeal the proposed transfer or discharge....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.... Conn. Gen. Stats. § 19a-535(c)(1)
8. Because of the Appellant's assaultive behavior which was putting the health and safety of facility's staff at risk, on [REDACTED] 2020, her transfer/discharge from the facility to the [REDACTED] was done on an emergency basis necessitated by her urgent medical needs and did not require prior notice, as provided in the statute.
9. 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 of the patient or the medical director in conjunction with the nursing director, social worker or other health care provider. Conn. Gen. Stat. § 19a-535(e)

10. Because the Appellant's transfer/discharge was an emergency transfer/discharge to Masonicare, the completion of a discharge plan was not necessary. By a preponderance of the evidence, the facility has complied with the provisions of Section 19a-535 of the Connecticut General Statutes in effecting an emergency transfer/discharge of the Appellant to [REDACTED] on [REDACTED] 2020.

**DECISION**

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

  
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Swati Sehgal  
Fair Hearing Officer

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

Desiree Pina, Connecticut State Long Term Care Ombudsman  
Department of Social Services  
55 Farmington Ave.  
Hartford, CT 06105

Patricia A. Calderone, Regional Ombudsman  
55 Farmington Avenue, Hartford, CT 06105

David Bond, Administrator  
[REDACTED]

### **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 Ave., 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 Ave., 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 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.