

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD CT 06105-3725

██████████, 2020
SIGNATURE CONFIRMATION

CLIENT ID # ██████████
Hearing ID#: ██████████

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2020, ██████████ (the "Facility"), sent ██████████ (the "Resident") a notice stating that he was being discharged from the Facility effective ██████████ 2020, and failed to readmit him to the Facility.

On ██████████, 2020, the Appellant's Power of Attorney ("POA"), ██████████, requested an administrative hearing to contest the Facility's decision.

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 17b-60, 17-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, the Resident
Attorney ██████████, POA's representative
██████████, Resident's POA
Dr. Farzana Begum, ██████████
Dan Lerman, Ombudsman
Dr. Gail Labadia, Medical Director ██████████
Patrick McDonnell, Administrator ██████████
Melanie McCreath, RN Yale New Haven Hospital
Michael Blake, Director of Nudging ██████████

Roberta Gould, Hearing Officer

On [REDACTED] 2020, OLCRAH reconvened the administrative hearing. The Appellant was present during part of the administrative hearing but was unable to participate in the hearing process.

The hearing record remained open in order to give the Facility the opportunity to submit additional information. On [REDACTED], 2020, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Facility's failure to readmit the Resident from [REDACTED] Hospital is correct.

FINDINGS OF FACT

1. The Appellant is a participant in the Medicaid program, as administered by the Department. (Hearing record)
2. On [REDACTED] 2019, the Resident was admitted to [REDACTED] long-term care facility with a diagnosis of Renal Disease, dementia, Atherosclerotic heart disease, Diabetes, hypertension, and had recently suffered a stroke. (Exhibit 3: Progress notes)
3. On [REDACTED] 2019, the Resident was observed performing oral sex on an impaired female resident of the Facility. He was moved to another room in the Facility. (Exhibit 2: Progress notes/reportable event form and Dr. Labadia's testimony)
4. On [REDACTED] 2019, the Resident was discharged to Yale New Haven Hospital due to weakness in his right upper and lower extremities. (Exhibit 2)
5. On [REDACTED], 2019, the Resident was readmitted to the Facility. (Exhibit 2)
6. On [REDACTED], 2019, the Resident was observed inappropriately touching and speaking to staff of the Facility. (Exhibit 2)
7. On [REDACTED] 2019, the Resident was observed inappropriately speaking to and attempting to inappropriately touch staff of the Facility. (Exhibit 2)
8. In [REDACTED] of 2019, the Resident was transferred to the [REDACTED] long-term care facility for a one week evaluation. (Dr. Labadia's testimony)
9. On [REDACTED] 2019, an evaluation of the Resident determined that he was at risk for decreased ability to perform Activities of Daily Living ("ADL's") such as

bathing, grooming, personal hygiene, dressing, eating, mobility, and toileting due to a change in his cognitive status. (Exhibit 2)

10. On [REDACTED], 2020, the Resident began experiencing agitation and psychosis. He allegedly entered a female resident's room and inappropriately touched her. The Facility placed him on one-on-one monitoring. (Exhibit 2)
11. On [REDACTED], 2020, the Facility contacted [REDACTED] Hospital, [REDACTED] Hospital and [REDACTED] Haven Hospital in order to evaluate him for psychiatric services. (Exhibit 2)
12. On [REDACTED] 2020, the Resident was transferred to [REDACTED] Hospital. (Exhibit 2 and Dr. Begum's testimony)
13. While at [REDACTED] Hospital the Resident suffered two falls and a brain bleed. (Dr. Begum's testimony)
14. The Resident's medications were adjusted when he arrived at [REDACTED] Hospital. He was prescribed Seraquel, Depakote, and Lexapro. (Dr. Begum's testimony)
15. The Resident required a walker assist and bed alarms to reduce fall risk. He is expected to become bed bound as his dementia and other health issues progress and is no longer mobile. (Dr. Begum's testimony)
16. On [REDACTED] 2020, [REDACTED] Hospital indicated to the Facility that the Resident was stabilized and prepared to be discharged from the hospital. (Dr. Begum's testimony)
17. The Facility did not reserve the Appellant's bed while he was at [REDACTED] Hospital for treatment. (Dr. Labadia's testimony)
18. On [REDACTED] 2020, Dr. Begum, the Facility's psychiatric physicians, the Facility's medical director, Facility administrator and Facility nursing staff member held a consultation regarding the Resident's psychiatric and medical status as well as placement issues. The Resident's POA was not included in this consultation. (Exhibit 2 and Dr. Labadia's testimony)
19. On [REDACTED] 2020, the Resident's POA contacted the Facility regarding the Resident's status as well as safety issues for him and residents of the Facility. (Exhibit 3)
20. [REDACTED] Hospital set up transport for the Resident back to the Facility, but [REDACTED] was unwilling to readmit him. (Dr. Begum's testimony)

21. The Facility determined that they were unable to provide one-on-one monitoring for the Resident should he return. (Dr. Labadia's testimony)
22. The Facility has a secure memory care unit for advanced dementia patients. (Dr. Labadia's testimony)
23. On [REDACTED] 2020, the Facility issued a Notice of Discharge to the Resident informing him that he was being discharged from [REDACTED] effective [REDACTED] 2020, because the safety of individuals in the facility is endangered due to his clinical or behavioral status and the health of the individuals in the facility would otherwise be endangered. (Exhibit 1: Facility's notice dated [REDACTED])
24. Since the Resident's [REDACTED], 2020, admission to [REDACTED] Hospital, he has not exhibited any aggressive physical tendencies, sexual behaviors or impulse control issues. (Dr. Begum's testimony)
25. The Resident responded well to medication and treatment while at [REDACTED] Hospital for treatment of psychosis. (Dr. Begum's testimony)
26. The Resident is appropriate and ready for a safe return to the Facility but the Facility refused to accept him because he had exhibited hyper-sexual behaviors in a congregate nursing home setting. (Dr. Labadia's testimony)
27. The Facility did not notify the Resident or his POA in writing within twenty-four hours of its determination to refuse to readmit the Appellant, the reasons for its refusal to readmit the Appellant, the right to appeal its refusal to readmit the Appellant, and the procedures for initiating an appeal. (POA's testimony)
28. The Facility did not develop an appropriate care plan to safely meet the Appellant's nursing home care needs, to establish a date for readmission that best meets the Appellant's needs, and to consider the Appellant's wishes and the hospital's recommendations. (Hearing Record)
29. The issuance of this decision is timely under Connecticut General Statutes §17b-61(a), which requires that a decision be issued within 90 days of the request for an administrative hearing. The Resident's POA requested an administrative hearing on [REDACTED], 2020. However, the hearing was reconvened on [REDACTED] 2020, and the close of the hearing record was further extended through [REDACTED] 2020, to allow for the submission of additional evidence by the Facility. Because of the delay in the close of the hearing record, this final decision is not due until [REDACTED], 2020, and is therefore timely.

CONCLUSIONS OF LAW

1. Connecticut General Statutes § 19a-537(h) 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.

2. Connecticut General Statutes §19a-537(c) provides that a nursing home shall reserve, for at least fifteen days, the bed of a resident who is a recipient of medical assistance and who is absent from such home due to hospitalization unless the nursing home documents that it has objective information from the hospital confirming that the resident will not return to the nursing home within fifteen days of the hospital admission including the day of hospitalization.

The Facility did not reserve the Appellant's bed while he was at [REDACTED] Hospital for treatment for less than fifteen days.

3. Connecticut General Statutes § 19a-537(h) provides that:

A nursing home shall not refuse to readmit a resident unless: (1) The resident's needs cannot be met in the facility; (2) the resident no longer needs the services of the nursing home due to improved health; or (3) the health and safety of individuals in the nursing home would be endangered by readmission of the resident. If a nursing home decides to refuse to readmit a resident either without requesting a consultation or following a consultation conducted in accordance with subsection (g) of this section, the nursing home shall, not later than twenty-four hours after making such decision, notify the hospital, the resident and the resident's guardian or conservator, if any, the resident's legally liable relative or other responsible party, if known, in writing of the following: (A) The determination to refuse to readmit the resident; (B) the reasons for the refusal to readmit the resident; (C) the resident's right to appeal the decision to refuse to readmit the resident; (D) the procedures for initiating such an appeal, as determined by the Commissioner of Social Services; (E) the resident has twenty days from the date of receipt of the notice from the facility to initiate an appeal; (F) the possibility of an extension of the time frame for initiating an appeal for good cause; (G) the contact information, including the name, mailing address and telephone number, for the Long-Term Care Ombudsman; and (H) the resident's right to represent himself or herself at the appeal hearing or to be represented by legal counsel, a relative, a friend or other spokesperson. If a resident is, or the nursing home alleges a resident is, mentally ill or developmentally disabled, the nursing home shall include in the notice to the resident the contact information, including 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 Commissioner of

Social Services, or the commissioner's designee, shall hold a hearing in accordance with chapter 54 to determine whether the nursing home has violated the provisions of this section. The commissioner, or the commissioner's designee, shall convene such hearing not later than fifteen days after the date of receipt of the 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. The commissioner, or the commissioner's designee, may require the nursing home to readmit the resident to a semiprivate room or a private room, if a private room is medically necessary. The Superior Court shall consider an appeal from a decision of the commissioner pursuant to this section as a privileged case in order to dispose of the case with the least possible delay.

4. Connecticut General Statutes § 19a-537(g) provides that:

Whenever a nursing home has concerns about the readmission of a resident, as required by subsection (e) of this section, based on whether the nursing home has the ability to meet the resident's care needs or the resident presents a danger to himself or herself or to other persons, not later than twenty-four hours after receipt of notification from a hospital that a resident is medically ready for discharge, a nursing home shall request a consultation with the hospital and the resident or the resident's representative. The purpose of the consultation shall be to develop an appropriate care plan to safely meet the resident's nursing home care needs, including a determination of the date for readmission that best meets such needs. The resident's wishes and the hospital's recommendations shall be considered as part of the consultation process. The nursing home shall reserve the resident's bed until completion of the consultation process. The consultation process shall begin as soon as practicable and shall be completed not later than three business days after the date of the nursing home's request for a consultation. The hospital shall participate in the consultation, grant the nursing home access to the resident in the hospital and permit the nursing home to review the resident's hospital records.

Although the Facility has a secure memory care unit that would be an appropriate level of care for meeting the Resident's psychiatric and physical needs and the hospital was able to stabilize the Appellant's symptoms, the Facility has incorrectly refused to readmit the Appellant.

The Facility failed to conduct a consultation that included the Resident or his representative or POA.

After an emergency hospitalization for psychiatric evaluation and stabilization, the medical evidence does not support the Facility's refusal to

readmit the Appellant based on its claim that the health and safety of individuals in the Facility would be endangered by the Appellant.

Connecticut General Statutes § 19a-537(f) provides that “When the Commissioner of Social Services, or the commissioner's designee, makes a finding that a resident has been refused readmission to a nursing home in violation of this section, the resident shall retain the right to be readmitted to the transferring nursing home pursuant to subsection (e) of this section regardless of whether or not the resident has accepted placement in another nursing home while awaiting the availability of a bed in the facility from which the resident was transferred.”

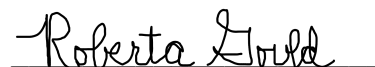
The Facility incorrectly discharged the Resident on [REDACTED] 2020, after [REDACTED] Hospital notified the Facility that the Resident’s condition had stabilized and that he was ready for a safe return to the Facility. In violation of State statute, the Facility refused to readmit the Appellant. As a licensed long-term care facility with a secure memory care unit, the Facility would be a suitable environment to meet the Resident’s care needs, and, in his current medical condition, would not present a threat to staff or other residents.

DECISION

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

ORDER

1. Effective immediately, the Facility shall allow the Resident to return to the next available bed.
2. The Facility shall work with the Resident’s POA to develop an appropriate care plan that safely meets his nursing home care needs, and to establish a date for his readmission that best meets his needs.
3. No later than [REDACTED] 2020, the Facility will submit to OLCRAH proof of compliance to the undersigned with this order.



Roberta Gould
Hearing Officer

cc: Donna Ortelle, Facility Licensing and Investigations Section, DPH
Dan Lerman, LTC Ombudsman Program, DSS Central Office
[REDACTED], Resident's POA
Patrick McDonnell, 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 Administrative Hearings and Appeals, 55 Farmington Avenue, Hartford, CT 06105-3725.

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.