

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, ██████████ Long Term Care Facility (the "Facility"), sent ██████████ ██████████ (the "Resident") a notice stating that he was being discharged from the Facility effective ██████████ 2020.

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 Sheldon Tobman, POA's representative  
██████████, Resident's POA  
Dr. Farzana Begum, ██████████ Hospital  
Dan Lerman, Ombudsman  
Dr. Gail Labadia, Medical Director ██████████  
Patrick McDonnell, Administrator ██████████  
Melanie McCreath, RN ██████████ 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 [REDACTED] decision to involuntarily discharge the Resident was 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 and reportable event form and Dr. Labadia's testimony)
4. On [REDACTED], 2019, the Resident was discharged to [REDACTED] 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] 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 Seroquel, 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. The Resident has not shown any aggressive physical tendencies, sexual behaviors or impulse control issues for the past four months while at [REDACTED] Hospital. (Dr. Begum's testimony)
17. 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)
18. The Facility did not reserve the Appellant's bed while he was at [REDACTED] Hospital for treatment. (Dr. Labadia's testimony)
19. 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)
20. 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)
21. [REDACTED] Hospital set up transport for the Resident back to the Facility, but [REDACTED] was unwilling to readmit him. (Dr. Begum'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. The notice directed the Resident to seek assistance from Nancy Shaffer of the Connecticut Long-Term Care Ombudsman Program in filing an appeal. (Exhibit 1: Facility's notice dated [REDACTED])
24. Mairead Painter currently holds the position of Connecticut Long-Term Care Ombudsman. (Hearing record)
25. The Facility did not develop a discharge plan for the Resident. (Hearing record)
26. 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. Section 17b-2 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to administer the Medicaid program.
2. Connecticut General Statutes § 19a-535(b) provides for the transfer and discharge of residents of nursing facilities under the Medicaid program and states, in part:

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 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 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 an 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.

3. Connecticut General Statutes § 17b-535(c)(1) provides that:

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 therefor, 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 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 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.

**On [REDACTED], 2020, the Facility did not issue the notice at least thirty days prior to the Resident's proposed discharge.**

**The Facility failed to provide information to the Resident's POA regarding the Facility's bed hold and nursing home readmission policy.**

**The Facility incorrectly listed Nancy Shaffer as the Long-Term Care Ombudsman.**

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.

**On [REDACTED] 2020, the Facility held a consultation regarding the Resident's psychiatric and medical status, but failed to notify the Resident's POA until after twenty-four hours had elapsed.**

**The Facility failed to reserve the Resident's bed until completion of the consultation process.**

**On [REDACTED], 2020, [REDACTED] was incorrect when it issued the Resident a notice stating that he was being discharged from the Facility effective [REDACTED] 2020.**

### **DISCUSSION**

After reviewing the evidence and testimony presented at this hearing, I find that the Facility acted incorrectly when it issued the notice of discharge to the Resident. Although the Resident had displayed inappropriate sexual behaviors before being admitted to [REDACTED] Hospital on [REDACTED], 2020, the hospital's physician indicated to the Facility that his medications had been adjusted and that he had not shown any aggressive physical tendencies, sexual behaviors or impulse control issues for the time that he was at the hospital. The Facility failed to demonstrate that the Resident endangered the health or safety of individuals in the facility.

Evidence in the hearing record reflects that the Facility failed to issue the notice at least 30 days prior to the proposed discharge, failed to conduct a consultation that included the Resident's POA until after twenty-four hours had elapsed, failed to reserve a bed for the Resident until the consultation process was completed or provide information to the Resident's POA regarding the Facility's bed hold and nursing home readmission policy and did not list the correct Long-Term Care Ombudsman on its notice of discharge, as required by State Statute.

**DECISION**

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

**ORDER**

1. The Facility is ordered to rescind its proposal to involuntarily discharge the Appellant from its care.
2. No later than [REDACTED] 2020, the Facility will submit to OLCRAH proof of compliance to the undersigned with this order.

  
Roberta Gould  
Hearing Officer

PC: 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.