

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

██████████ 2021
Signature Confirmation

Case # ██████████
Client ID # ██████████
Request # 170109

NOTICE OF DISMISSAL

PARTY

██████████
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PROCEDURAL BACKGROUND

On ██████████ 2020, ██████████ Nursing Home, a skilled nursing facility sent ██████████ (the Appellant) a Notice of Discharge proposing to involuntarily discharge the Appellant from its care within 30 days of his receipt of the letter due to the facility closing.

On ██████████ 2020, the Appellant requested an administrative hearing to contest the discharge.

On ██████████ ██████████ 2020, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for ██████████ 2021.

On ██████████, 2021, the Appellant requested a re-schedule and it was granted.

On ██████████ 2021, OLCRAH issued a notice scheduling the re-scheduled administrative hearing for ██████████ 2021.

On ██████████ 2021, 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:

██████████ Appellant's daughter and conservator
██████████, Quality Manager of ██████████
Atty. ██████████ ██████████, counsel for ██████████
Almelinda McLeod, Hearing Officer

██████████, Appellant *was not* present due to her institutional status.

The hearing record was extended for the submission of additional evidence. On ██████████ 2021, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether ██████████ properly notified the Appellant of its intent to Discharge in accordance with state and federal law.

FINDINGS OF FACT

1. The Appellant had been a resident of ██████████ ██████████ for approximately 10 years. (Hearing record)
2. Sometime in ██████████ 2020, the Appellant's conservator was alerted that the facility would close. (Hearing record)
3. On ██████████, 2020, the Department of Social Services approved the facility's petition to terminate all beds and Chronic and Convalescent nursing home services and close the facility. (Exhibit 1, Final Decision)
4. On ██████████ 2020, ██████████ issued a notice of discharge to the Appellant. The reason for the discharge was because the facility had applied and was approved to close their facility. (Exhibit B)
5. The discharge notice provided three alternatives nursing facilities: ██████████ or ██████████. (Exhibit B)
6. ██████████ was the facility that the Appellant was going to be transferred to. (Hearing record)
7. There were ongoing discussions regarding the discharge plan between the Appellant's conservator and the facility. A meeting and or telephone conferences were held on: ██████████ 2020, ██████████, 2020, ██████████, 2020, ██████████, 2020, ██████████, 2020, ██████████, 2020, ██████████, 2020, ██████████, 2020, ██████████, 2020, and ██████████, 2020. (Exhibit 2, Discharge Plan)
8. In these discussion, it was made known that ██████████ also owned and operated ██████████. (Hearing record)
9. The conservator agreed that if a spot opened up in ██████████, the conservator was willing to send the Appellant there. (Appellant's testimony)

10. The day before [REDACTED] Day, the conservator was notified that, as a result of a Covid 19 issue, [REDACTED] was unable to accept the Appellant at that time. (Hearing record)
11. At this time, the conservator continued to pursue other options; which included an application for money follows the person and other nursing homes. (Appellant's testimony)
12. Discussions continued between the conservator and the facility as the Appellant continued to reside in the facility. (facility testimony)
13. Shortly thereafter, [REDACTED] [REDACTED] [REDACTED] became available again. (Hearing record)
14. A discharge plan was issued to the Appellant's conservator. (Conservator's testimony)
15. A discharge plan was issued to the Appellants doctor, Dr. [REDACTED]. (Hearing record)
16. At a Probate court hearing, the conservator accepted the discharge into [REDACTED] for the Appellant. (Hearing record)
17. On [REDACTED] 2021, the facility officially closed its doors when the last person was discharged. In this case, the last person discharged was the Appellant who was the only resident in the facility for three weeks. (Hearing record)
18. As of this date of this hearing, the application for money follows the person is still pending, however the conservator will be withdrawing her application as the Appellant will be staying at [REDACTED]. (Appellant testimony)

CONCLUSIONS OF LAW

1. Section 17b-2 & 17b-262 of the Connecticut General Statutes designates that the Department is the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act and may make such regulations as are necessary to administer the medical assistance program.
2. Section 19a-535 (a) (4) of the Connecticut General Statutes provides "discharge" means the movement of a resident from a facility to a non-institutional setting.

3. Section 19a-535 (b) Connecticut General Statutes provides:

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, a physician shall document the basis for transfer or discharge in the resident's medical record.

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 readmission policy when required in accordance with section 19a-537, as amended by this act. The notice shall also include the name, mailing address, and telephone number of the States Long Term Care Ombudsman. The notice shall be given at least thirty days and no more than sixty days prior to the residents proposed transfer or discharge, except where the health or safety of individuals in the facility are endangered, or where the residents health improves sufficiently to allow a more immediate transfer or discharge.

5. The Facility correctly issued the proposed discharge notice because the facility was approved to close.

6. The Facility correctly issued the appropriate discharge notices at least thirty days and no more than sixty days prior to the Appellant's proposed or discharge.

7. The Facility correctly notified the Appellant's conservative and the Appellant's medical doctor regarding the proposed discharge. The notice also included the State Long Term Care Ombudsman as per regulation.
8. Uniform Policy Manual ("UPM") § 1570.25 (c)(2)(k) provides that the Fair Hearing Official renders a Fair Hearing decision in the name of the Department, in accordance with the Department's policies and regulations. The Fair Hearing decision is intended to resolve the dispute.

UPM § 1570.25 (F) (1) provides that the Department must consider several types of issues at an administrative hearing, including the following:

- a. eligibility for benefits in both initial and subsequent determinations

The Appellant's conservators has accepted the discharge into [REDACTED]. The Appellant has not experienced any loss of benefits and or services.

The Appellant's hearing issue has been resolved, therefore, there is no issue on which to rule. "When the actions of the parties themselves cause a settling of their differences, a case becomes moot." McDonnell v. Maher, 3 Conn. App. 336 (Conn. App. 1985), citing, Heitmuller v. Stokes, 256 U.S. 359, 362-3, 41 S.Ct. 522, 523-24, 65 L.Ed. 990 (1921). The conservator has accepted the discharge into [REDACTED]; there is no practical relief that can be afforded through an administrative hearing.

DECISION

The Appellant's appeal is Dismissed as moot.



Hearing Officer

CC: Gail Decorso
Marilyn Richards, Meridian Manor

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.