

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

[REDACTED] 2022
Signature Confirmation

Case Number: [REDACTED]
Client ID Number: [REDACTED]
Request #: 194552

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2022, [REDACTED] (the "Facility") issued a letter proposing to involuntarily discharge [REDACTED] (the "Appellant"), from care on [REDACTED] 2022, within [REDACTED] days of his receipt of the letter.

On [REDACTED] 2022, the Appellant requested an Administrative Hearing to contest the Facility's proposed discharge.

On [REDACTED] 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an Administrative Hearing for [REDACTED] 2022.

On [REDACTED] 2022, the Facility requested the hearing be rescheduled.

On [REDACTED] 2022, the OLCRAH issued a notice rescheduling the Administrative Hearing for [REDACTED] 2022.

On [REDACTED] 2022, in accordance with Connecticut General Statutes § 19a-535 and § 4-176e to § 4-189, inclusive, OLCRAH held an Administrative Hearing by phone. The following individuals participated telephonically in the hearing:

██████████, Appellant
Tasha Jackson, Regional Long Term Care Ombudsman
██████████, Appellant's significant other
██████████, Administrator, ██████████
██████████, Social Worker, ██████████
██████████, Director of Rehabilitation, ██████████
██████████, Director of Nursing, ██████████
Jessica Gulianello, Hearing Officer

The hearing record remained open to allow the Ombudsman time to submit additional information on behalf of the Appellant and to allow the Administrator time to submit additional information on behalf of the Facility. Additional documents were received from both parties and on ██████████ 2022, the hearing record closing accordingly.

STATEMENT OF THE ISSUE

The Administrative Hearing was scheduled for Involuntary Transfer due to a scheduling error. 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 improved health.

FINDING OF FACTS

1. The Appellant is ██████████. (Hearing Record)
2. In ██████████ 2022, the Appellant was involved in a ██████ accident. The Appellant was seen at ██████████ Hospital for ██████████, and he was discharged ██████████. (Hearing Record)
3. On ██████████ 2022, the Appellant was readmitted to ██████████ Hospital due to complaints of ██████████. (Hearing Record)
4. On ██████████ 2022, the Appellant was transferred from ██████████ Hospital to the Facility. (Hearing Record)
5. ██████████ Hospital documented the Appellant's address as ██████████. (Exhibit C2: ██████████ Admission Record: Interfacility Transfer Summary, Facility Testimony)
6. The Appellant's admitting diagnoses included: ██████████ ██████████ ██████████
██████████
██████████
██████████
██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (Hearing Record)

7. Physician, [REDACTED] ordered the Facility to provide the Appellant with [REDACTED]
[REDACTED]. (Exhibit 4D: [REDACTED] Order Summary Report, [REDACTED] 2022)
8. The Appellant's medications included but were not limited to: [REDACTED]
[REDACTED]
[REDACTED]
(Exhibit 4D: [REDACTED] Order Summary Report, [REDACTED] 2022, Hearing Record)
9. The Facility determined the Appellant to be independent with his Activities of Daily Living ("ADL's") excluding occasional hands-on assistance with bathing. (Exhibit B4: ADL Charts, Facility Testimony)
10. The Facility determined the Appellant to be independent with his Instrumental Activities of Daily Living ("IADL's") excluding the medication management provided by the staff. (Exhibit C3: [REDACTED] Progress Notes, Facility Testimony)
11. The Appellant utilizes a [REDACTED] and a [REDACTED] as needed for assistance with his mobility. (Appellant's Testimony)
12. On [REDACTED] 2022, the Facility determined the Appellant no longer required the services of the Facility due to improved health. The Facility issued a [REDACTED] Notice of intent to Discharge (the "Discharge Notice") to the Appellant stating its intent to involuntarily discharge the Appellant on [REDACTED] 2022, [REDACTED] days from the date of its notice. The Discharge notice states the Appellant will be discharged to [REDACTED]
[REDACTED]. The Discharge Notice further gave the Appellant information about his appeal rights. (Exhibit A: Discharge Notice, [REDACTED]/2022, Hearing Record)
13. The Discharge Notice reflects two different street numbers "[REDACTED]" and "[REDACTED]" for the same [REDACTED] address due to a transposing error in the numbers by the Facility. (Exhibit A: Discharge Notice, [REDACTED]/2022, Facility Testimony)
14. On [REDACTED] 2022, the Facility provided the Appellant with information for [REDACTED]
[REDACTED]. (Exhibit 5B: [REDACTED] Progress Notes, Exhibit C3: [REDACTED] Progress Notes, Facility Testimony)

15. The Facility submitted a Nursing Facility Level of Care Referral (“NFLOC”) to the Department of Social Services’ contracted Medicaid authorization agency, (“Maximus”). The Facility was unable to confirm the date of said referral during the Hearing proceedings. (Facility Testimony)
16. On ██████ 2022, the Facility certified ██████ therapy services █ to █ times per ██████ for a duration of █ days for the certification period of ██████/2022 ██████/2022 for the Appellant. (Exhibit 4B: Physical Therapy Notes)
17. On ██████ 2022, Maximus issued a Notice of Action (“NOA”) denying the level of care as not medically necessary for the Appellant. (Exhibit B5: NOA, ██████ 2022, Facility Testimony)
18. The Appellant is in the process of appealing the NFLOC denial from Maximus. (Hearing Record)
19. The Appellant is working collaboratively with Money Follows the Person (“MFP”) on a Care Plan. (Exhibit 3A: Universal Care Plan, Hearing Record)
20. The Facility did not complete and/or provide the Appellant with an approved Discharge Plan. (Facility, Testimony, Hearing Record)
21. 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 ██████ 2022, is ██████ 2022, and thirty days from ██████ 2022, is ██████ 2022. The Hearing record which had anticipated to close on ██████ 2022, did not close for the admission of evidence until ██████ 2022, at the Appellant’s request. Because this additional █-day delay in the close of the record arose from the Appellant’s request, this final decision was not due until ██████ 2022, and is therefore timely. (Hearing Record)

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.

The record reflects Maximus had not issued a determination on the NFLOC at the time the Facility proposed to discharge the Appellant. However, because the Facility had determined the Appellant was no longer in need of their services due to improved health there is a legal basis upon which the Facility may seek to discharge 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.

The Facility correctly gave the Appellant a Discharge Notice [REDACTED] prior to the proposed discharge date which included the effective date of the discharge, the reason for the discharge, and his appeal rights.

The Appellant contacted the Long-Term Care Ombudsman and exercised his right to have her representation in his interests.

The Discharge Notice reflected two different street numbers for the Appellant due to a transposing error in the numbers by the Facility.

The Appellant argued that he is authorized to use the proposed address of [REDACTED] for mailing purposes only.

The Facility did not verify with the Appellant and/or the current residents of the [REDACTED] address if it was/is a viable housing option for the Appellant.

6. 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 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 or 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 affects. 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.

The Appellant is working with MFP on a Care Plan.

The Facility did not comply with the state statutes and failed to develop and/or provide a discharge plan to the Appellant that includes a written evaluation of the effects of the discharge, a statement of the actions taken to minimize such effects, and an outline of the care and services authorized by the appropriate parties.

The Facilities proposal to discharge the Appellant is rejected.

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] 2022, the Facility will submit to OLCRAH proof of compliance with this order.

Jessica Gulianello

Jessica Gulianello
Hearing Officer

Cc: [REDACTED], Administrator,
[REDACTED]

Tasha Jackson, LTC Ombudsman Program,
Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105

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.