

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

██████████ 2022
Signature Confirmation

Client ID Number: ██████████
Request #: 198324

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2022, ██████████ (the “Facility”) issued a letter proposing to involuntarily discharge ██████████ (the “Appellant”), from care on ██████████ 2022, within 30 days of his receipt of the letter.

On ██████████ 2022, the Appellant requested an Administrative Hearing to contest the Facility’s proposed discharge.

On ██████████ 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling an Administrative Hearing for ██████████ 2022.

On [REDACTED] 2022, in accordance with Connecticut General Statutes § 19a-535 and § 4-176e to § 4-189, inclusive, OLCRAH held an Administrative Hearing in-person at the Facility.

On [REDACTED] 2022, the Appellant identified himself as a person with Limited English Proficiency (“LEP”) and requested the assistance of an interpreter in his native language, [REDACTED]. The Facility contacted Language Line Solutions by phone. [REDACTED], [REDACTED] from Language Line Solutions, Identification number [REDACTED] interpreted the proceedings in [REDACTED] telephonically.

The following individuals participated in-person at the Hearing:

- [REDACTED], Appellant
- [REDACTED], Administrator, [REDACTED]
- [REDACTED], Business Office Manager, [REDACTED]
- [REDACTED], Social Worker, [REDACTED]
- Jessica Gulianello, Hearing Officer

The hearing record remained open to allow the Facility time to submit information. Additional documents were received, and the Hearing Record closed accordingly on [REDACTED] 2022, at the close of the business day.

STATEMENT OF THE ISSUE

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.

FINDING OF FACTS

1. The Appellant is [REDACTED] years old (D.O.B. [REDACTED]). (Hearing Record)
2. The Appellant was hospitalized for [REDACTED]. (Appellant’s Testimony)
3. On [REDACTED], 2021, the Appellant was admitted to [REDACTED] for anticipated long-term care services. ([REDACTED] Progress Notes, [REDACTED]/2021)
4. The Appellant’s admitting diagnoses included: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]. (Exhibit C: [REDACTED] Progress Notes: Diagnoses, Exhibit D: [REDACTED] Order Summary Report: Diagnoses)
5. [REDACTED] is an affiliated Skilled Nursing Center of [REDACTED]. (Hearing Record)
 6. On [REDACTED] 2021, the Appellant initialed the [REDACTED] document entitled, Smoking Policy which outlines policies for Centers that are smoke-free and for Centers that allow smoking. (Exhibit B: Smoking Policy: printed [REDACTED]/2021, initialed [REDACTED]/2021)
 7. On [REDACTED] 2021, [REDACTED] (the Facility "Social Worker") entered the following [REDACTED] Progress Note: "SW reminded [REDACTED] ([REDACTED]) that if he takes [REDACTED] out he cannot take any cigarette back to the building and to encourage his [REDACTED] to not consume any [REDACTED]. [REDACTED] states he agrees." (Exhibit C: [REDACTED] Progress Notes, [REDACTED]/2021)
 8. On [REDACTED] 2021, the Social Worker entered the following [REDACTED] Progress Note, "SW explained non-smoking policy to patient. SW explained to patient that a 30 days notice will be given if he is caught smoking again." (Exhibit C: [REDACTED] Progress Notes, [REDACTED]/2021)
 9. On [REDACTED] 2022, the Social Worker entered the following [REDACTED] Progress Note, "A 30 days notice was given to resident secondary to smoking at facility. Resident has been educated on smoking policy numerous times but resident fail to follow the policy. [REDACTED] SW tried to talk with resident however [REDACTED]. SW will provide patient with list of [REDACTED]. Facility is willing to [REDACTED] to assist with discharge planning." (Exhibit C: [REDACTED] Progress Notes, [REDACTED]/2022)
 10. The Appellant does not dispute the Facility's allegations that he was smoking on the premises. (Appellant's Testimony)
 11. On [REDACTED] 2022, the Facility determined the Appellant endangered the safety of individuals at the Facility due to his clinical or behavioral status and issued a 30-day Notice of Intent to Discharge (the "Discharge Notice") to the Appellant stating its intent to involuntarily discharge the Appellant on [REDACTED] 2022, 30 days from the date of its notice. The Discharge Notice states the Appellant will be discharged to [REDACTED] - [REDACTED], [REDACTED] - [REDACTED]. The Discharge Notice further gave the Appellant information about his appeal rights. (Exhibit 2: Discharge Notice, [REDACTED]/2022, Hearing Record)

12. On [REDACTED] 2022, the Facility issued a Discharge Plan for the Appellant. (Exhibit A: Discharge Plan, Facility Testimony)
13. The Discharge Plan proposed to discharge the [REDACTED] with 30 days paid starting [REDACTED] 2022 and ending on [REDACTED] 2022. A follow up appointment to be scheduled with a [REDACTED] at [REDACTED] for the Appellant to obtain medication refills and he is to be discharged from the Facility with his remaining in-house medication. Homecare is not available [REDACTED] and the Appellant does not qualify for Meals on Wheels [REDACTED]. (Exhibit A: Discharge Plan, [REDACTED]/2022)
14. The Discharge Plan does not include any signatures to verify who developed and or approved the plan. (Exhibit A: Discharge Plan, [REDACTED]/2022)
15. It is not clear when the Discharge Plan was provided to and reviewed with the Appellant. (Hearing Record)
16. The Appellant's current medications include but were not limited to: [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (Exhibit D: [REDACTED] Order Summary Report, [REDACTED]/2022)
17. The Appellant requires the use of a [REDACTED], or [REDACTED] as needed for assistance with his mobility. (Appellant's Testimony)
18. The Appellant is not currently receiving any type of [REDACTED] at the Facility. (Hearing Record)
19. The Appellant is independent with his Activities of Daily Living and his Instrumental Activities of Daily. (Exhibit E: PRN Dashboard, Appellant's Testimony, Facility Testimony)
20. Nursing Facility Level of Care is not [REDACTED]. (Facility Testimony)
21. The Appellant is [REDACTED]. (Appellant's Testimony)
22. The Appellant does not [REDACTED]. (Appellant's Testimony)
23. 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 [REDACTED] 2022, is [REDACTED] 2022, and thirty days from [REDACTED] 2022, is [REDACTED] 2022. This final decision is due no later [REDACTED] 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 Facility determined the Appellant endangered the health and safety of individuals at the Facility by smoking on the property.

The Appellant does not contest that he was in fact smoking at the Facility.

There is a legal basis upon which the Facility may seek to discharge the Appellant.

4. 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 30 days prior to the proposed discharge date which included the effective date of the discharge, the reason for the discharge, and his appeal rights.

5. Conn. Gen. Stat. § 19a-535(e) 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 effects. 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 Facility did not comply with Conn. Gen. Stat. The Discharge Plan does not include a written evaluation of the effects of the proposed discharge on the Appellant and a statement of the actions taken to minimize such effects.

It is not clear who developed and or approved the Discharge Plan as there are no signatures on the document.

The Facility did not provide documentation to substantiate when the Discharge Plan was provided to the Appellant or if a [REDACTED] Interpreter was present with consideration of his LEP.

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]