

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

██████████, 2022  
SIGNATURE CONFIRMATION

CASE # ██████████  
CLIENT ID # ██████████  
REQUEST # ██████████

NOTICE OF DECISION

PARTY

██████████  
██████████  
██████████

PROCEDURAL BACKGROUND

On ██████████ 2022, ██████████ (the "Facility") issued a thirty (30) day Notice of Transfer/Discharge to ██████████ (the "Appellant") indicating its intent to involuntarily discharge the Appellant on or after ██████████, 2022, because of improved health.

On ██████████, 2022, the Appellant requested an administrative hearing to contest the Facility's propose discharge.

On ██████████, 2022, the Office of Legal Counsel, Regulations and Administrative Hearings ("OLCRAH") scheduled an administrative hearing for 10:00 a.m. on ██████████, 2022, to be conducted via telephone conference.

On ██████████, 2022, in accordance with sections 19a-535 and 4-176 to 4-184, inclusive of the Connecticut General Statutes, the administrative hearing went forward with the following individuals participating:

██████████, Appellant  
██████████, Vice President of ██████████ (Management Company of Facility)  
██████████, Administrator, ██████████  
██████████, MDS Coordinator, ██████████  
██████████, MDS Coordinator, ██████████  
██████████, Program Director, ██████████  
██████████, Director of Social Services, ██████████

Joseph Alexander, Administrative Hearing Officer

The hearing record closed [REDACTED] 2022.

### **STATEMENT OF THE ISSUES**

The issue to be decided is whether the Facility acted in accordance with state laws and federal regulations when it proposed to involuntarily discharge the Appellant to her previous home address.

### **FINDINGS OF FACT**

1. The Appellant was admitted to [REDACTED] on [REDACTED], 2022, with admitting diagnoses of major depressive disorder, suicidal ideations, post-traumatic stress disorder, substance abuse, bronchitis, and nicotine addiction. (Facility Testimony)
2. On [REDACTED] 2022, the Facility issued a Notice of Transfer/Discharge to the Appellant, indicating that she would be discharged to her previous home address of [REDACTED] on or after [REDACTED] 2022, due to the Appellant no longer requiring the services of a skilled nursing facility. (Facility Ex. 1: Notice of Transfer/Discharge)
3. On [REDACTED], 2022, the Appellant requested an administrative hearing to contest the Facility's proposed discharge. (Hearing Record)
4. On [REDACTED] 2022, the Facility provided an addendum to the Notice of Transfer/Discharge. The addendum addresses the following six (6) areas; (1) possibility of obtaining placement within family's geographical area, (2) assessment of acceptability of placement to resident, (3) any other relevant factors that affect resident's adjustment to the move, (4) assessment of potential medical, social and/or psychological effects of the discharge, (5) measures taken to minimize the effects identified in #4 and (6) care and services resident will receive upon discharge. The addendum does not display any signatures of any Facility staff or the Appellant. (Facility Ex. 2: Addendum to Notice of Transfer/Discharge)
5. The medical review completed by Maximus, the Department's contractor for determining the medical necessity for nursing facility level of care, concluded the Appellant is independent with her activities of daily living and instrumental activities of daily living and is no longer in need of the constant care provided at the Facility and that the Appellant's needs could be met in the community with outpatient services. (Facility Testimony)
6. As of the date of the hearing, [REDACTED] 2022, the Facility had not provided a comprehensive discharge plan/summary to the Appellant. (Facility Testimony)

7. As of the date of the hearing, [REDACTED] 2022, the Facility has arranged suitable support services for the Appellant effective upon her discharge. (Facility Testimony)
8. The issuance of this decision is timely under Connecticut General Statutes (“Conn. Gen. Stat”) § 19a-535(h) (1) which requires that a decision be issued not later than [REDACTED] days after the termination of the hearing or not later than [REDACTED] days after the date of the hearing request, whichever occurs sooner. The hearing request was received on [REDACTED], 2022, and the hearing was held on [REDACTED] 2022. [REDACTED] days from [REDACTED] 2022, is [REDACTED] 2022. However, [REDACTED] 2022, falls on a [REDACTED] making [REDACTED] days from [REDACTED] 2022, [REDACTED] [REDACTED] 2022. [REDACTED] days from [REDACTED], 2022, is [REDACTED], 2022. However, [REDACTED], 2022, falls on a [REDACTED] making [REDACTED] days from [REDACTED], 2022, [REDACTED] [REDACTED] 2022. This decision is therefore due no later than [REDACTED] 2022.

### **CONCLUSIONS OF LAW**

1. Conn. Gen. Stat. § 19a-535 (h) (1) authorizes the Commissioner of Social Services or the commissioner’s designee to hold a hearing to determine whether a transfer or discharge is being affected in accordance with this section.

**The Department has the authority under state statute and regulation to schedule and hold nursing facility discharge hearings.**

2. 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 § 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 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. In each case where the welfare, health or safety of the resident is concerned the documentation shall be by the resident’s physician. A facility which is part of a continuing care facility which guarantees life care for its residents may transfer or discharge (1) a self-pay resident who is a member of the continuing care community and who has intentionally transferred assets in a sum which will render the resident unable to pay the costs of facility care in accordance with the contract between the resident and the facility, or (2) a self-pay resident who is not a member of the continuing care community and who has intentionally transferred assets in a sum which will render the resident unable to pay the costs of a total of forty-two months of facility care from the date of initial admission to the facility.

Title 42 of the Code of Federal Regulations (“C.F.R.”) § 483.15(c)(1)(i) provides the facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless – (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.

**The Facility’s proposal to discharge the Appellant because she no longer needs the services of the Facility due to improved health meets the statutory requirements of discharge.**

3. Conn. Gen. Stat. § 19a-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 know, 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 § 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

**The Facility correctly provided the Appellant with at least █ days prior notice in writing, of the proposed discharge date, which included the effective date of the discharge, the reasons for discharge, and a location to which the Appellant would be discharged and her appeal rights.**

4. 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 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 services that 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.

42 C.F.R. § 483.15(c)(2) provides when the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (c)(1)(i)(A) through (F) of this section, the facility must ensure that the transfer or discharge is documented in the resident's medical record and appropriate information is communicated to the receiving health care institution or provider. (i) Documentation in the resident's medical record must include: (A) The basis for the transfer per paragraph (c)(1)(i) of this section. (B) In the case of paragraph (c)(1)(i)(A) of this section, the specific resident need(s) that cannot be met, facility attempts to meet the resident needs, and the service available at the receiving facility to meet the need(s).

42 C.F.R. § 483.15(c)(4)(i) provides that before a facility transfers or discharges a resident, the facility must – (i) Except as specified in paragraphs (c)(4)(ii) and (8) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.

42 C.F.R. § 483.15(c)(4)(ii) provides notice must be made as soon as practicable before transfer or discharge when – (C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (c)(1)(i)(B) of this section.

The Facility failed to provide the Appellant a copy of a discharge plan at least [REDACTED] days before the Appellant's proposed discharge date.

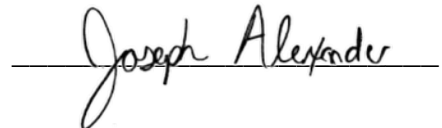
The Facility's proposal to discharge the Appellant does not comply with state statutes and federal regulations.

**DECISION**

The Appellant's appeal is **GRANTED**

**ORDER**

The Facility is directed to rescind the Appellant's proposed discharge notice. A copy of the retracted notice is due to the undersigned no later than [REDACTED] days after the date this decision is issued.

A handwritten signature in cursive script that reads "Joseph Alexander". The signature is written over a solid horizontal line.

**Joseph Alexander  
Administrative Hearing Officer**

CC: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Tasha Erskine-Jackson, Regional Ombudsman  
Department of Aging and Disability 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 §4-1181a (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 with **45** days of the mailing of this decision, or **45** days after the agency denies 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, 165 Capitol Avenue, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105-3725. 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 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.