

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

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

Case Number: ██████████
Client ID Number: ██████████
Request #: 203574

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 November 29, 2022.

On ██████████ 2022, the OLCRAH issued a notice amending the issue of the Administrative Hearing.

On ██████████ 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.

9. On or about [REDACTED] 2022, the Facility submitted a Nursing Facility Level of Care Referral (“NFLOC”) to the Department of Social Services contracted Medicaid authorization agency (“Maximus”). (Facility Testimony)
10. On [REDACTED] 2022, Maximus issued a Notice of Action (“NOA”) denying the NFLOC as not medically necessary for the Appellant. (Facility Testimony)
11. On [REDACTED] 2022, the Department updated the NFLOC determination in the electronic database referred to as Ascend. (Facility Testimony)
12. The Appellant is currently independent with his Activities of Daily Living (“ADL’s”). He does not require hands-on assistance with bathing, dressing, eating, toileting, continence, transferring, or mobility. (Appellant’s Testimony)
13. The Facility failed to provide the Appellant’s ADL Charts as requested following the hearing proceedings. (Hearing Record)
14. The Appellant utilizes a single-point cane for assistance with his mobility on an as-needed basis. (Appellant’s Testimony)
15. The Appellant is not currently participating in therapy at the Facility. (Hearing Record)
16. The Appellant is working collaboratively with Money Follows the Person (“MFP”) to secure housing in the community. He is awaiting the completion of the inspection for an apartment. (Appellant’s Testimony)
17. On [REDACTED] 2022, the Facility determined that the Appellant no longer required the services of the Facility due to improved health. The Facility issued a 30-day Notice of Intent to Discharge (the “Discharge Notice”) authorized by the Licensed Nursing Home Administrator (“LNHA”) to the Appellant stating the intent to involuntarily discharge him on [REDACTED] 2022, 30 days from the date of the notice. The Discharge Notice states in the absence of any known community-based residency the Appellant will be discharged to [REDACTED], [REDACTED]. The Discharge Notice further gave the Appellant information about his appeal rights. (Exhibit 1: Discharge Notice, [REDACTED] 2022, Hearing Record)
18. On [REDACTED] 2022, the Facility also provided an Addendum (“Discharge Plan”). The Discharge Plan was signed by the Facility Administrator, the Facility Director of Nursing, and the Facility Social Worker. The Discharge Plan outlined the recommended discharge setting as [REDACTED], [REDACTED], in the area where the Appellant lived before his admission. The plan identified measures to minimize the proposed discharge’s disruptive effects, including assistance by the facility social work staff, referrals to community-based providers, and other service agencies to assist the Appellant with transition planning. (Exhibit 2: Addendum/Discharge Plan, [REDACTED] 2022, Facility Testimony)

19. The Facility social worker is available to assist the Appellant with the intake process at the identified [REDACTED] following the issuance of this decision. (Exhibit 2: Addendum/Discharge Plan, [REDACTED] 2022, Facility Testimony)
20. 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] [REDACTED] 2022, and thirty days from [REDACTED] 2022, is [REDACTED] 2022. This decision is due no later than [REDACTED] 2022, and is therefore timely.

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.

Because Maximus and the Facility determined that the Appellant is no longer in need of the services of the Facility 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 at least 30-day notice of the proposed discharge date which included the effective date of the discharge, the reason for the discharge, a location to which he would be discharged, and his appeal rights.

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.

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.