

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

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

Case # ██████████
Client ID # ██████████4
Request # 200666

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████, 2022, ██████████ (the "Facility") sent ██████████ (the "Appellant") a Notice of Discharge indicating its intent to involuntarily discharge the Appellant because he no longer requires the services of the Facility due to improved health.

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 the administrative hearing for ██████████ 2022.

On ██████████ 2022, the Appellant requested the hearing to be rescheduled due to the Ombudsman's absence. The hearing was rescheduled for ██████████, 2022.

On ██████████ 2022, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189 inclusive of the Connecticut General Statutes, OLCRAH held an administrative hearing at the facility. The following individuals were present at the hearing:

██████████, Appellant

[REDACTED], Appellant's Conservator
 [REDACTED], Director of Social Services- [REDACTED]
 [REDACTED], Assistant Director of Nursing Services- [REDACTED]
 [REDACTED], Social Worker- [REDACTED]
 [REDACTED], Regional Financial- [REDACTED]
 [REDACTED], Minimal Data Set- [REDACTED]
 [REDACTED], State Ombudsman- [REDACTED]
 [REDACTED], Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Facility acted in accordance with state law when it purposed to involuntarily discharge the Appellant from the Facility.

FINDINGS OF FACT

1. On [REDACTED] 2021, the Appellant was admitted to the Facility from [REDACTED] with a primary diagnosis of [REDACTED] and [REDACTED] following [REDACTED]. (Exhibit 3: Admission Record and Appellant's testimony)
2. The Appellant is [REDACTED] [DOB: [REDACTED]] (Exhibit 3: Admission Record and Appellant's testimony)
3. On [REDACTED] 2022, an [REDACTED] Discharge Packet was completed which determined that the Appellant had completed his rehabilitation and therapy, and no longer required a skilled nursing facility level of care. He was found independent in his Activities of Daily Living (ADL's). (Exhibit 5: Discharge Packet)
4. As of the date of this hearing, the Appellant remains independent in all his ADL's. (Facility's Testimony)
5. On [REDACTED] 2022, the Facility issued a Notice of Discharge to the Appellant. The notice stated that the Appellant would be discharged from the Facility on [REDACTED] 2022, due to improved health and that he longer required the care and services of a skilled nursing facility. The notice indicated that the Appellant would be discharged to [REDACTED] [REDACTED] in [REDACTED], CT. In addition, the notice listed all the required information regarding the appeals process. (Exhibit 1: Notice of Discharge)
6. On [REDACTED] 2022, a Discharge Plan was attached to the Notice of Discharge and issued to the Appellant. The plan was signed by the

Facility's Director of Social Services, Dietitian, Physical Therapist, Medical Doctor, and Administrator. (Exhibit 5: Discharge Packet)

7. The Addendum to the Discharge Plan contains a written assessment of the effects of the discharge and proposed steps to minimize disruptions. The plan states the Appellant "will be established with a primary care doctor in [REDACTED]. Social Services and IDT will continue to provide [the Appellant] with support until the date of discharge." (Exhibit 2: Addendum to Discharge Plan)
8. The Addendum to the Discharge Plan contains an outline of care and types of services the Appellant would receive upon discharge. It states the Appellant, "can utilize public transportation or Veyo as he did prior to admission for his medical appointments per his report. A follow-up appointment will be made with [REDACTED] in [REDACTED] so that [the Appellant] can establish a PCP who will provide oversight while in the community. [The Appellant] has an appointment on [REDACTED]/2022 with [REDACTED] [REDACTED]...[The Appellant] can utilize [REDACTED] Pharmacy in [REDACTED], CT, or [REDACTED] in [REDACTED], CT. [The Appellant] does not meet the criteria for home care as he is not homebound. (Exhibit 2: Addendum to Discharge Plan)
9. Though the Appellant's original healthcare appointment dates have passed the facility has established a primary care physician for the Appellant. (Facility Testimony)
10. 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 thirty days after the termination of the hearing or not later than sixty days after the date of the hearing request, whichever occurs sooner. The hearing was requested on [REDACTED] 2022 and held on [REDACTED] 2022. Thirty days from [REDACTED], 2022, is [REDACTED] 2022. Sixty days from [REDACTED], 2022, is [REDACTED] 2022. However, due to the Appellant rescheduling the hearing on [REDACTED], 2022, this hearing is due no later than [REDACTED], 2022, using the 30-day language based on the second hearing date.

CONCLUSIONS OF LAW

1. Section 19a-535(h)(1) of the Connecticut General Statutes ("Conn. Gen. Stat.") provides upon receipt of a request for a hearing to appeal any proposed transfer or discharge, the Commissioner of Social Services or the commissioner's designee shall hold a hearing to determine whether the transfer or discharge is being affected in accordance with this section.

2. Conn. Gen. Stat. § 19a-535(a)(4) defines “discharge” as the movement of a resident from a facility to a noninstitutional setting.

The Department has the authority under state statutes and regulations to schedule and hold nursing facility discharge hearings.

3. Conn. Gen. Stat. § 19a-535(b) states 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 17b-360, or the health or safety of individuals in the facility is endangered. ... In each case the basis for transfer or discharge shall be documented in the resident's medical record by a physician or an advanced practice registered nurse.
4. Title 42 of the Code of Federal Regulations (“C.F.R.”) § 483.15(c)(1)(i)(B) provides the facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless the transfer or discharge is appropriate because the resident’s health has improved sufficiently so the resident no longer needs the service provided by the facility.

The Facility correctly determined that the Appellant no longer needs the services of the skilled nursing facility due to improved health, based upon completion of a medical review.

5. Conn. Gen. Stat. § 19a-535(c)(1) provides 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 therefor, 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 nonprofit entity designated by the Governor in accordance with section 46a-10b to serve as the Connecticut protection and advocacy system. 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 provided the Appellant a discharge notice 30 days prior to the proposed discharge date. The notice included the effective date of the discharge, the reason for the discharge, a location to which the Appellant would be discharged to, the State of Connecticut Ombudsman information, and their appeal rights.

6. Conn. Gen. Stat. § 19a-535(e) provides 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 that 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 or advanced practice registered nurse 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 correctly developed a Discharge Plan which contained a written evaluation of the effects of the discharge as well as measures taken to minimize any disruptive effects. The plan also indicated the care and kinds of services that the Appellant would receive once discharged.

7. Conn. Gen. Stat. § 19a-535(g) provides the facility shall be responsible for assisting the resident in finding appropriate placement.

The Facility correctly assisted the Appellant in finding an appropriate placement at [REDACTED] in [REDACTED], CT upon discharge.

DISCUSSION

Based on the evidence and testimony presented at the hearing, the Facility acted in accordance with state law when it proposed to involuntarily discharge the Appellant from [REDACTED].

The Facility issued all the required documentation including the Notice of Discharge as well as the Discharge Plan, and also took responsibility for assisting the Appellant in finding appropriate placement once discharged.

The Appellant's Conservator was provided with a list of Residential Care Homes from the state's Ombudsman. The Appellant would be able to apply for a Residential Care Home from the [REDACTED] if he completes the application and his primary care physician completes the required paperwork.

DECISION

The Appellant's appeal is **DENIED**

[REDACTED]
Fair Hearing Officer

CC: [REDACTED], Director of Social Services, [REDACTED]
[REDACTED] - Appellant's Conservator

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.

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, 165 Capitol Avenue, 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.