

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

██████████ 2023  
Signature Confirmation

Case # ██████████  
Client ID # ██████████  
Hearing # 202450

**NOTICE OF DECISION**

**PARTY**

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**PROCEDURAL BACKGROUND**

On ██████████, 2022, ██████████ (the "Facility") issued a Notice of Intent to Discharge Resident to ██████████ (the "Appellant") expressing their intent to involuntarily discharge the Appellant, stating their reason for discharge that he poses a safety risk to Facility residents and staff.

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, 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.

The following individuals were present at the hearing:

- ██████████, the Appellant
- ██████████, Social Worker Hartford Hospital
- ██████████, Nurse Practitioner Hartford Hospital
- ██████████, Facility Administrator Grandview Rehabilitation

Alisha Richardson, Fair Hearing Officer

At the Appellant's request, the hearing record remained open on [REDACTED], for the submission of additional information by the Facility and Hartford Hospital. Hartford Hospital submitted its documents on [REDACTED], 2022. The Facility submitted its documents on [REDACTED], 2022, and the record closed on [REDACTED], 2022.

A separate decision was issued for the issue of involuntary discharge.

On [REDACTED], 2022, the undersigned issued a hearing decision granting the Appellant's appeal.

On [REDACTED] 2022, the undersigned granted a reconsideration based on her own motion for the purpose of reviewing the involuntary discharge and adding the issue of Failure to Readmit.

On [REDACTED], 2022, the Appellant and the Facility were given 10 days to provide a rebuttal to the addition of the Failure to Readmit issue.

The Hearing record closed on [REDACTED], 2022, and additional information was received from the Facility.

On [REDACTED] 2023, the undersigned issued a hearing decision denying the Appellant's Appeal for an involuntary discharge.

### **STATEMENT OF THE ISSUE**

The issue is whether the Facility followed state law and federal regulation when it refused to readmit the Appellant.

### **FINDINGS OF FACT**

1. On [REDACTED], 2022, the Appellant was admitted to the Facility from [REDACTED] Hospital with a primary diagnosis of [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] (Facility Exhibit 4: Admission Record and Appellant Exhibit 6: Brain injury Consult notes)
2. The Appellant is [REDACTED] (D.O.B. [REDACTED]) and is a Medicaid recipient. (Facility Exhibit 4: Admission Record)
3. On [REDACTED], 2022, the Appellant exited his room and complained about the television volume from the room next door, room 117. He

- threatened to smother both residents who resided in room 117 with a pillow and kill them. (Facility Exhibit 7: Witness Statements, Facility Exhibit 3: Facility Summary and Facility Testimony)
4. On [REDACTED] 2022, during physical therapy, the Appellant continued to make threats to smother the residents in room 117. In addition, the Appellant began to harm himself with his fists and referenced harming others previously. As a result, the facility notified the police. (Exhibit 3: Facility Summary, Facility Exhibit 7: Witness Statements)
  5. On [REDACTED] 2022, the Facility sent the Appellant to the [REDACTED] [REDACTED] Emergency Department via ambulance for an evaluation. The Appellant returned to the facility on the same day and continued to make threats. (Exhibit 3: Facility Summary, Exhibit 8: Police Report and Facility testimony)
  6. On [REDACTED] 2022, [REDACTED], [REDACTED] Registered Nurse, performed a psychiatric evaluation on behalf of the facility and determined the Appellant is a danger to himself and others. She recommended a higher level of care evaluation. (Facility Exhibit 5: Psychiatric Evaluation and Exhibit 3: Facility Summary)
  7. On [REDACTED], 2022, [REDACTED] (the "Physician") conducted a Physician's Emergency Certificate on behalf of the facility. The Physician indicated that the Appellant is gravely disabled and is a danger to himself or others. (Facility Exhibit 6: Physician Emergency Statement)
  8. On [REDACTED] 2022, the [REDACTED] Police Department questioned the Appellant regarding his threatening comments towards the residents in room 117 and the comments he made about killing someone previously. EMS then transported the Appellant to [REDACTED] Emergency Department. (Facility Exhibit 8: Police Report and Facility Exhibit 3: Facility Summary)
  9. The facility held a bed for the Appellant for 15 days, through [REDACTED] 2022. (Facility Testimony)
  10. On [REDACTED], 2022, staff members from the Facility and [REDACTED] [REDACTED] held a consultative process meeting. The Facility indicated they were unable to provide the level of supervision needed for the Appellant to maintain his and other residents' safety. (Facility Exhibit 3: Facility Summary)
  11. The Facility discussed a discharge plan with [REDACTED], but a care plan for the return of the Appellant to the Facility was not developed (Hearing Record)

12. On [REDACTED] 2022, the Facility issued a Notice of Intent to Discharge to [REDACTED] inpatient psychiatric ward. The Notice stated that he is a danger to himself and others. (Facility Exhibit 1: Notice of Intent to Discharge and Exhibit 1a: Notice of Intent to Discharge)
13. On [REDACTED] 2022, the Appellant requested an administrative hearing to contest the Facility's Notice of Discharge. (Facility Exhibit 2: Discharge/Transfer Request for Fair Hearing)
14. On [REDACTED] 2022, [REDACTED], a psychologist with [REDACTED], completed a Neuropsychology initial consultation with the Appellant. She determined he does not meet the criteria for inpatient psychiatric hospitalization and recommended from a cognitive standpoint, there are no safety concerns for the Appellant to return to the facility and continue his rehab. (Appellant Exhibit 2: Neuropsychology Initial Consult)
15. At the time of the hearing, the Appellant remains in the [REDACTED] Emergency Department. (Hearing Record)
16. On [REDACTED] 2022, the Facility provided a copy of the Appellant's Criminal/Motor Vehicle Conviction Case Detail and a news story from Patch dated [REDACTED] 2020, stating the Appellant was charged and ultimately convicted of second-degree threatening. On [REDACTED] 2015, the Appellant was convicted of second-degree Breach of Peace. (Exhibit 9: Patch News Story and Exhibit 10: Criminal Conviction Detail)
17. The issuance of this decision is timely under Connecticut General Statutes ("Conn. Gen. Stat.") §19a-537(h)(3)(H) which requires that a decision be issued not later than thirty days after the date on which the hearing record is closed. The hearing was requested and held on [REDACTED], 2022. Thirty days from [REDACTED] 2022, is [REDACTED], 2023. However, due to a ten-day extension granted to the Appellant and his representative to provide additional documentation, this hearing is due no later than [REDACTED], 2023.

### **CONCLUSIONS OF LAW**

1. Connecticut General Statutes ("Conn. Gen. Stat.") § 19a-537(h)(3)(H) in relevant part, authorizes the Commissioner of Social Services or the commissioner's designee to hold a hearing to determine whether a refusal to readmit is being affected in accordance with this section.
2. Conn. Gen. Stat § 19a-535(a)(1) defines "facility" as an entity certified as a nursing facility under the Medicaid program or an entity certified as a

skilled nursing facility under the Medicare program or with respect to facilities that do not participate in the Medicaid or Medicare programs, a chronic and convalescent nursing home or a rest home with nursing supervision as defined in section 19a-521;

3. Conn. Gen. Stat § 19a-535(a)(3) defines “transfer” as means the movement of a resident from one facility to another facility or institution, including, but not limited to, a hospital emergency department, if the resident is admitted to the facility or institution or is under the care of the facility or institution for more than twenty-four hours;
4. Conn. Gen. Stat § 19a-535(a)(6) defines “emergency” as a situation in which a failure to effect an immediate transfer or discharge of the resident that would endanger the health, safety or welfare of the resident or other residents.

**The Appellant’s [REDACTED], 2022, verbal threats toward residents of the Facility endangered the health, safety, and welfare of the Appellant and residents.**

**The Appellant’s continued verbal threats on [REDACTED], 2022, requiring police intervention and his removal from the facility as a safety measure met the criteria of an emergency as defined in the statute.**

5. Conn. Gen. Stat § 19a-535(c)(1) 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.

6. Title 42 of the Federal Code of Regulations ("C.F.R.") § 483.15(c)(1)(ii) provides the facility may not transfer or discharge the resident while the appeal is pending, pursuant to § 431.230 of this chapter, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to § 431.220(a)(3) of this chapter, unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer or discharge would pose.

**The Facility correctly effected the Appellant's [REDACTED], 2022, emergency transfer to [REDACTED] for a secondary psychiatric evaluation based on the determination that the health and safety of the Appellant and/or other individuals within the Facility was endangered.**

7. Conn. Gen. Stat 19a-537 (c) provides a nursing home shall reserve, for at least fifteen days, the bed of a resident who is a recipient of medical assistance and who is absent from such home due to hospitalization unless the nursing home documents that it has objective information from the hospital confirming that the resident will not return to the nursing home within fifteen days of the hospital admission including the day of hospitalization.

**The Facility's bed reserve ran from [REDACTED], 2022, through [REDACTED] 2022.**

8. Conn. Gen. Stat 19a-537(g) provides whenever a nursing home has concerns about the readmission of a resident, as required by subsection (e) of this section, based on whether the nursing home has the ability to meet the resident's care needs or the resident presents a danger to himself or herself or to other persons, not later than twenty-four hours after receipt of notification from a hospital that a resident is medically ready for discharge, a nursing home shall request a consultation with the hospital and the resident or the resident's representative. The purpose of the consultation shall be to develop an appropriate care plan to safely meet

the resident's nursing home care needs, including a determination of the date for readmission that best meets such needs. The resident's wishes and the hospital's recommendations shall be considered as part of the consultation process. The nursing home shall reserve the resident's bed until completion of the consultation process. The consultation process shall begin as soon as practicable and shall be completed not later than three business days after the date of the nursing home's request for a consultation. The hospital shall participate in the consultation, grant the nursing home access to the resident in the hospital and permit the nursing home to review the resident's hospital records.

**On [REDACTED], 2022, the Facility held a consultation with [REDACTED] but a care plan was not developed.**

9. Conn. Gen. Stat § 19a-537(h) provides a nursing home shall not refuse to readmit a resident unless: (1) The resident's needs cannot be met in the facility; (2) the resident no longer needs the services of the nursing home due to improved health; or (3) the health and safety of individuals in the nursing home would be endangered by readmission of the resident. If a nursing home decides to refuse to readmit a resident either without requesting a consultation or following a consultation conducted in accordance with subsection (g) of this section, the nursing home shall, not later than twenty-four hours after making such decision, notify the hospital, the resident and the resident's guardian or conservator, if any, the resident's legally liable relative or other responsible party, if known, in writing of the following: (A) The determination to refuse to readmit the resident; (B) the reasons for the refusal to readmit the resident; (C) the resident's right to appeal the decision to refuse to readmit the resident; (D) the procedures for initiating such an appeal, as determined by the Commissioner of Social Services; (E) the resident has twenty days from the date of receipt of the notice from the facility to initiate an appeal; (F) the possibility of an extension of the time frame for initiating an appeal for good cause; (G) the contact information, including the name, mailing address and telephone number, for the Long-Term Care Ombudsman; and (H) the resident's right to represent himself or herself at the appeal hearing or to be represented by legal counsel, a relative, a friend or other spokesperson. If a resident is, or the nursing home alleges a resident is, mentally ill or developmentally disabled, the nursing home shall include in the notice to the resident the contact information, including 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 Commissioner of Social Services, or the commissioner's designee, shall hold a hearing in accordance with chapter 54 to determine whether the nursing home has violated the provisions of this section. The commissioner, or the commissioner's designee, shall convene such hearing not later than fifteen

days after the date of receipt of the request. The commissioner, or the commissioner's designee, shall issue a decision not later than thirty days after the date on which the hearing record is closed. The commissioner, or the commissioner's designee, may require the nursing home to readmit the resident to a semiprivate room or a private room, if a private room is medically necessary. The Superior Court shall consider an appeal from a decision of the commissioner pursuant to this section as a privileged case in order to dispose of the case with the least possible delay.

**The Facility did not properly notify the Appellant and ██████████ ██████████ of their refusal to readmit the Appellant and the reason for the refusal.**

### DISCUSSION

The Facility's belief that the Appellant is a danger to himself and others was not supported by the evidence. The evidence, (exhibits 7, 9, 10, and 12), all speak to the appellant's propensity to make verbal threats but there is no record of him being physically violent.

The Appellant's criminal history (exhibit 10) has a conviction for breach of peace and threatening, with no convictions on file for physical violence. The witness statements and ██████████ emergency department notes, only reference the client making verbal threats. The evidence does not support the claim that the Appellant would endanger the health, safety, or welfare of himself or other residents.

The Neuropsychology Initial Consult Note from ██████████ states per the Appellant's family, his baseline mental status included making flippant verbally aggressive comments. The Appellant's wife and daughter informed the social worker at ██████████ that the Appellant does not have any incidents of physical violence or aggression, but he does frequently make inappropriate statements when frustrated. The family had no concerns regarding his safety or the safety of other residents in the facility. The Appellant did not meet the criteria for inpatient psychiatric hospitalization and ██████████ ██████████ Psychologist recommendations stated, "From a cognitive stand point, there are no safety concerns for [The Appellant] to return to the facility and continue his rehab."

Furthermore, the Facility failed to develop a care plan after its consultation with ██████████ as outlined under Conn. Gen. Stat. § 19a-537(g). The Facility also failed to properly notify the Appellant and ██████████ of their refusal to readmit the Appellant, as well as their reason for refusal, as outlined under Conn. Gen. Stat. § 19a-537(h).



**DECISION**

The Appellant's appeal is **Granted**.

*Alisha Richardson*

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Alisha Richardson  
Fair Hearing Officer

CC: [REDACTED], Social Worker Hartford Hospital  
[REDACTED], Nurse Practitioner Hartford Hospital  
[REDACTED], Facility Administrator Grandview Rehabilitation

### **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.