

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 RECONSIDERED 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 ██████████
██████████, Nurse Practitioner ██████████
██████████, Facility Administrator ██████████

Alisha Richardson, Fair Hearing Officer

At the Appellant's request, the hearing record remained open on [REDACTED], 2022, for the submission of additional information by the Facility and [REDACTED]. [REDACTED] I. [REDACTED] 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 Failure to Readmit.

On [REDACTED] 2022, the undersigned issued a hearing decision approving 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.

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

STATEMENT OF THE ISSUE

The issue is whether the Facility followed state law and federal regulation when it proposed to involuntarily discharge 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]. (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. 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)
10. 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)
11. 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)

12. On [REDACTED] 2022, [REDACTED], a psychologist with [REDACTED] [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)
13. At the time of the hearing, the Appellant remains in the [REDACTED] Emergency Department. (Hearing Record)
14. The issuance of this decision is timely under Connecticut General Statutes (“Conn. Gen. Stat.”) §4-181(a)(3) which requires that a decision be issued not later than ninety days after the agency decides to reconsider the final decision. The reconsideration was requested on [REDACTED] 2022, and the undersigned granted a reconsideration based on her own motion on [REDACTED], 2022. Ninety days from [REDACTED], 2022, is [REDACTED] 2023. However, due to a ten-day extension granted to the Appellant and the Facility, this hearing is due no later than [REDACTED], 2023.

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(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.”) section 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 – (C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident; (D) The health of individuals in the facility would otherwise be endangered.
5. 42 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.
6. 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.

At the time of the incident, The Facility correctly effected the Appellant’s ██████████ 2022, emergency transfer to ██████████ ██████████ for a second psychiatric evaluation based on the determination that the Appellant’s threatening behavior was escalating.

7. 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.

8. Conn. Gen. Stat. § 19a-535(h)(4) states in an emergency the notice required pursuant to subsection (c) of this section shall be provided as soon as practicable. A resident who is transferred or discharged on an emergency basis or a resident who receives notice of such a transfer or discharge may contest the action by requesting a hearing in writing not later than twenty days after the date of receipt of notice or not later than twenty days after the date of transfer or discharge, whichever is later, unless the resident demonstrates good cause for failing to request a hearing within the twenty-day period. A hearing shall be held in accordance with the requirements of this subsection not later than fifteen business 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 Facility correctly issued a discharge notice to the Appellant on [REDACTED], 2022.

DECISION

The Appellant's appeal is **Denied**

Alisha Richardson

Alisha Richardson
Fair Hearing Officer

CC: [REDACTED], Social Worker [REDACTED]
[REDACTED], Nurse Practitioner [REDACTED]
[REDACTED], Facility Administrator [REDACTED]

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.