

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

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

Client ID ██████████
Case ID ██████████
Request # 203359

NOTICE OF CORRECTED DECISION

PARTY

██████████
████████████████████
██████████
████████████████████

PROCEDURAL BACKGROUND

On, ██████████ 2022, ██████████ (the “facility”) delivered a Notice of Transfer Discharge to ██████████ (the “Appellant”) informing her of their intention to discharge her from their care on ██████████ 2022 to the ██████████. homeless shelter.

On ██████████ 2022, the Appellant requested an administrative hearing to contest the facility’s proposed action to discharge her from the facility.

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 19a-535 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing at the facility located at ██████████, ██████████.

The following individuals were present at the November 17, 2022 hearing:

██████████, Appellant
██████████, Social Worker, ██████████
██████████, Assistant Director of Nursing, ██████████
Lisa Nyren, Fair Hearing Officer

On [REDACTED] [REDACTED] 2022, the Appellant requested reconsideration which OLCRAH granted on [REDACTED] [REDACTED] 2022.

On [REDACTED] [REDACTED] 2023, the Fair Hearing Officer Lisa Nyren (“FHO Nyren”) opened the administrative hearing record issuing a request for information to the facility.

On [REDACTED] [REDACTED] 2023, the hearing record closed.

On [REDACTED] [REDACTED] 2023, the FHO Nyren completed a desk review and rendered a decision reversing the original decision as per Section 4-181a(a)(3) of the Connecticut General Statutes.

STATEMENT OF THE ISSUE

The issue to be decided is whether the facility complied with statutory requirements when it proposed to discharge the Appellant to a homeless shelter on [REDACTED] [REDACTED] 2022.

FINDINGS OF FACT

1. On [REDACTED] [REDACTED] 2021, [REDACTED] (the “facility”), a skilled nursing facility, admitted the Appellant to their facility. The Appellant’s admitting diagnosis included COPD and blood infection. (Social Worker Testimony and Assistant Director of Nursing Testimony)
2. The Appellant does not meet nursing facility level of care criteria because the Appellant does not require continuous skilled nursing services as provided by the facility. On [REDACTED] [REDACTED] 2022, the Department of Social Services denied the Appellant’s appeal for a continuation of nursing facility level of care. (Hearing Record)
3. On [REDACTED] [REDACTED] 2022, the facility issued the Appellant a Notice of Transfer/Discharge. The facility informed the Appellant of their intent to discharge her to [REDACTED] (“shelter”), a homeless shelter, on [REDACTED] [REDACTED] 2022. The facility lists the reason for discharge as “Your health has improved so that you no longer need the services provided by the facility.” The facility listed the State ombudsman as copied via the Internet portal at <https://adsapps.ct.gov/LTCOP/Default.aspx> on the notice. (Exhibit A: Notice of Transfer/Discharge)
4. On [REDACTED] [REDACTED] 2022, the facility issued the Appellant an Addendum to Notice of Discharge (“discharge plan”). The following individuals signed the discharge plan: [REDACTED], Administrator; [REDACTED],

- APRN; [REDACTED], Director of Nursing Services; and [REDACTED], Social Worker. The plan lists the Appellant to be discharged to a local shelter, [REDACTED] that provides onsite case management services to assist with finding permanent housing and onsite medical and behavioral health clinic services and meals. Assistance with referrals to community-based health and human service agencies for follow-up care will be made by the facility's social work staff prior to discharge. The facility will provide a comprehensive discharge plan with medical appointment dates, times, and location prior to discharge. The Appellant is invited to share concerns with her facility doctors, nurses, social work staff and mental health providers. (Exhibit A: Notice of Transfer/Discharge)
5. The Appellant is age [REDACTED] and is independent with activities of daily living which include bathing, toileting, dressing, eating, and transferring. (Appellant's Testimony)
 6. The Appellant does not require skilled nursing services. The Appellant does not anticipate additional services upon discharge, other than 30-day services that may be provided by the [REDACTED] (Appellant's Testimony)
 7. The Appellant requests to extend her stay at the facility because she has not secured appropriate housing in the community. The Appellant requests additional assistance in securing housing from the facility. The Appellant's application for funds through Money Follows the Person (MFP) and Connecticut Housing Engagement and Support Services (CHESS) were denied because she did not meet the qualifying criteria. The Appellant's application for subsidized housing was denied due to a prior eviction. (Appellant's Testimony and Social Worker Testimony)
 8. The Appellant receives Social Security Disability benefits, but the monthly benefit is not enough to secure housing in this market. (Appellant's Testimony)
 9. The Appellant resided in a homeless shelter in [REDACTED] prior to her admission to the facility. (Appellant's Testimony)
 10. On [REDACTED] [REDACTED] 2023, the FHO Nyren reopened the hearing record and issued the facility a request for information notice. The FHO Nyren requested the facility supply proof that the facility electronically reported their decision to involuntarily discharge the Appellant to the Internet web site portal maintained by the State Ombudsman. The FHO Nyren listed the due date for this information as [REDACTED] [REDACTED] 2023. Additionally, the FHO Nyren issued the Appellant a copy of this notice. (Facility Letter and Questionnaire)

11. The hearing record closed on [REDACTED] [REDACTED] 2023. As of [REDACTED] [REDACTED] 2023, which allowed for review of any evidence which may have been post-marked on [REDACTED] [REDACTED] 2023, FHO Nyren did not receive a response from the facility via United States Postal Service or email from the facility.
12. The issuance of this decision is timely under Section 4-181a(a)(3) of the Connecticut General Statutes which provides for a decision made after reconsideration shall be rendered not later than ninety days following the date on which the agency decision to reconsider the final decision. On [REDACTED] [REDACTED] 2022, the OLCRAH granted reconsideration. Ninety days from [REDACTED] [REDACTED] 2022 is [REDACTED] [REDACTED] 2023. Therefore, this decision is due no later than [REDACTED] [REDACTED] 2023.

CONCLUSIONS OF LAW

1. Section 19a-535(a) of the 2022 Supplement to the Connecticut General Statutes ("Supplement Conn. Gen. Stat.") provides as follows:

For the purposes of this section: (1) "Facility" means 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; (2) "continuing care facility which guarantees life care for its residents" has the same meaning as provided in section 17b-354; (3) "transfer" 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) "discharge" means the movement of a resident from a facility to a noninstitutional setting; (5) "self-pay resident" means a resident who is not receiving state or municipal assistance to pay for the cost of care at a facility, but shall not include a resident who has filed an application with the Department of Social Services for Medicaid coverage for facility care but has not received an eligibility determination from the department on such application, provided the resident has timely responded to requests by the department for information that is necessary to make such determination; and (6) "emergency" means 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.

State statute provides as follows:

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, 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, a physician assistant or an 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, physician assistant or advanced practice registered nurse. A facility that 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 that 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 that 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.

2022 Supplement Conn. Gen. Stats. § 19a-535(b)

"No resident shall be involuntarily transferred or discharged from a facility if such transfer or discharge is medically contraindicated." 2022 Supplement Conn. Gen. Stat. § 19a-535(f)

The facility correctly determined the Appellant no longer needs the services of the facility because the Appellant is independent in her care at the facility due to improved health.

2. State statute provides as follows:

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.

2022 Supplement Conn. Gen. Stat. § 19a-535(c)(1)

On [REDACTED] 2022, the facility correctly notified the Appellant in writing of the proposed discharge, the reason for the discharge, the effective date of the discharge allowing the minimum of 30 days' notice, and the location to which the Appellant is to be discharged. The facility correctly included the right to an appeal hearing and the date the appeal must be initiated in order to stay the proposed discharge.

3. State statute provides as follows:

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, physician assistant 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, physician assistant 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.

2022 Supplement Conn. Gen. Stat. 19a-535(e)

"The facility shall be responsible for assisting the resident in finding an appropriate placement." 2022 Supplement Conn. Gen. Stat. 19a-535(g)

The facility has met the statutory requirement of formulating a discharge plan to include a written evaluation of the effects of the transfer or discharge on the resident, a statement of action taken to minimize such effects, and an outline of care and services which the resident would receive upon discharge.

4. State statute provides as follows:

A facility shall electronically report each involuntary transfer or discharge to the State Ombudsman, appointed pursuant to section 17a-405, (1) in a manner prescribed by the State ombudsman, and (2) on an Internet web site portal maintained by the State Ombudsman in accordance with patient privacy provisions of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as amended from time to time.

2022 Supplement to the Conn. Gen. Stat. 19a-535(k) as amended by Section 9 Public Act No. 22-57

State statute provides as follows:

If the commissioner, or the commissioner's designee, determines after a hearing held in accordance with this section that the facility has transferred or discharged a resident in violation of this section, the commissioner, or the commissioner's designee, may require the facility to readmit the resident to a bed in a semiprivate room or in a private room, if a private room is medically necessary, regardless of whether or not the resident has accepted placement in another facility pending the issuance of a hearing decision or is awaiting the availability of a bed in the facility from which the resident was transferred or discharged.

Conn. Gen. Stat. § 19a-535(h)(6)

Although the facility listed the State ombudsman as copied via portal upload on the discharge notice, the hearing record is void of any evidence supporting this. The FHO made a request to the facility to document compliance with Section 19a-535(k) of the Connecticut General Statutes, however the FHO received no such documentation by the requested due date from the facility.

The facility failed to comply with the statutory requirements under Section 19a-535 of the Conn. Gen. Stats. when it proposed to discharge the Appellant to a homeless shelter.

DECISION

The Appellant's appeal is granted.

ORDER

1. The facility is ordered to rescind the [REDACTED] 2022 Notice of Transfer/Discharge and reissue a corrected notice according to Section 19a-535 of the Connecticut General Statutes.
2. The facility is ordered to electronically report the Appellant's involuntary discharge to the Internet web site portal maintained by the State Ombudsman in accordance with patient privacy provisions of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.
3. Compliance is due 14 days from the date of this decision.

Lisa A. Nyren
Lisa A. Nyren
Fair Hearing Officer

CC: [REDACTED]
Administrator
[REDACTED]
[REDACTED]
[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 Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Ave., 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, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Ave., 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 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.