

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

Client ID ██████████
Case ID ██████████
Request # 206574

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2022, ██████████ (the "Facility") delivered a written Notice of Transfer/Discharge regarding ██████████ (the "Appellant") to ██████████ (the "Appellant's spouse") informing her of its intent to discharge the Appellant from its care on ██████████, 2022.

On ██████████ 2022, the Appellant's spouse requested an administrative hearing to contest the Facility's action to discharge the Appellant 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, 19a-537, 17b-61 and 4-176e to 4-189 inclusive of the Connecticut General Statutes, OLCRAH held an administrative hearing via teleconference at the Appellant's spouse's request.

The following individuals called in for the hearing:

██████████, the Appellant's spouse
██████████ Ombudsman
██████████, Administrator, ██████████
██████████, Director of Nursing Services, ██████████

██████████, Director of Social Services, ██████████
 ██████████ ██████████, Staff Development/Infection Control, ██████████ ██████████ ██████████
 ██████████
 Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Facility complied with statutory requirements when it proposed to discharge the Appellant on ██████████, 2022.

FINDINGS OF FACT

1. On ██████████, 2022, the Facility, a skilled nursing facility, admitted the Appellant to its facility for a short-term stay. The Appellant's status later changed to long-term care. (Director of Social Services Testimony)
2. The Appellant's admitting diagnosis included TIA/transient ischemic attack, failure to thrive, cardiomyopathy, unsteady gait, Parkinson's disease, and anxiety and depression. The Appellant is ██████████ years old. (Director of Nursing Testimony)
3. While at the Facility, the Appellant refused care and was generally agitated finding it difficult to adjust to his placement at the Facility. On one occasion, the Appellant refused wound care while blood dripped down his leg. (Director of Nursing Testimony)
4. The Appellant became difficult to redirect when agitated requiring extra time from Facility staff. The Facility psychiatric staff met with the Appellant on ██████████ 2022, ██████████ 2022, ██████████ 2022, ██████████ 2022, and ██████████ 2022 to address the Appellant's behaviors. (Director of Nursing Testimony and Staff Development Infection Control Testimony)
5. During the Appellant's stay, the Facility psychiatric staff changed the Appellant's medication, monitored his blood work, and switched his room and roommates to manage the Appellant's erratic behaviors. (Director of Nursing Testimony, Director of Social Services Testimony, and Staff Development Infection Control Testimony)
6. On ██████████ 2022, the Facility transferred the Appellant to ██████████ ██████████ ("local hospital") for stabilization after he threatened his roommate and Facility staff. Once stabilized at the hospital, the Appellant returned to the Facility the same day. (Director of Social Services Testimony)

7. On [REDACTED] 2022, the Facility placed the Appellant in a private room after a private room became available on a rehabilitation unit. (Director of Social Services Testimony)
8. On [REDACTED] 2022, the Appellant's aggressive behaviors escalated at the Facility. The Appellant entered a common area in the Facility and began throwing books, knocking over furniture, removing screens from windows, breaking things, threatening residents and hitting staff. The Facility's attempts to de-escalate the situation failed and the Facility called the local police for assistance. The police restrained the Appellant and medical staff transported the Appellant to the hospital emergency room where he remained. The Facility includes the following documents with a Appellant when transferred: change of condition, transfer and bed hold documents, and medication list. (Staff Development/Infection Control Testimony and Director of Nursing Services Testimony)
9. The Appellant's physician documented the reason for the emergency transfer to the hospital in the Appellant's medical record. (Director of Social Services Testimony)
10. On [REDACTED] 2022, the Facility spoke with the Appellant's spouse to discuss the Appellant's transfer to the hospital. The Facility believed the Appellant would not return to its facility upon his release from the hospital and the Appellant's spouse would locate another skilled nursing facility which could meet the Appellant's medical and psychiatric needs and ensure his safety. (Director of Social Services Testimony)
11. The Facility is prohibited by law to use restraints. The Facility does not have a locked facility. The Facility uses the WanderGuard system to protect those residents at risk of elopement. The Appellant was outfitted with WanderGuard; however, he learned if the door is pushed, it will open. Eventually, the Appellant removed his WanderGuard bracelet on his own. (Director of Nursing Testimony)
12. The Facility did not hold the Appellant's bed upon transfer to the hospital because the Appellant was self-pay and it believed that the Appellant's spouse would seek alternative placement. (Director of Social Services Testimony)
13. On [REDACTED] 2022, the Appellant's aggressive behaviors continued at the hospital and the hospital transferred the Appellant to [REDACTED] [REDACTED] ("behavioral health facility") for evaluation and stabilization. (Director of Social Services Testimony and Staff Development/Infection Control Testimony)

14. On [REDACTED], 2022, the Appellant's spouse contacted the Facility to request the Appellant return to the Facility upon discharge from the behavioral health facility. The Facility verbally informed the Appellant's spouse, the Appellant's needs could not be met by the Facility, and it would not accept him back. (Director of Social Services Testimony)
15. On [REDACTED] 2022, the Appellant fell at the behavioral health facility resulting in his transfer to [REDACTED] ("current hospital"). The Appellant was not cleared as a psychiatric patient by the behavioral health facility prior to his transfer to the current hospital. (Director of Social Services Testimony)
16. On [REDACTED] 2022, the current hospital admitted the Appellant where he currently remains. While at the current hospital, the Appellant required a Foley catheter bag which he tried to remove himself requiring hospital staff to place him in restraints. The Appellant no longer requires a Foley bag. Although the Appellant has been stabilized without any psychological incidents for two weeks, does not require restraints and psychologically cleared by the current hospital, he remains medically compromised and not ready for discharge from the current hospital. The current hospital continues to evaluate his low heart rate, dizziness with fall risk, low blood sugar, low hypertension, and the possibility of a pacemaker placement. (Spouse's Testimony, Director of Nursing Testimony, and Director of Social Services Testimony)
17. On [REDACTED] 2022, the Appellant received a 30-Day Notice of Intent to Transfer or Discharge Resident letter ("discharge letter") dated [REDACTED], 2022. The Facility informed the Appellant of its intent to discharge the Appellant from its Facility because the "health or safety of individuals in the facilities are endangered and your needs and welfare cannot be met in this facility." The notice included the Appellant's appeal rights and deadlines, State Long Term Care Ombudsman access information and [REDACTED] access information. The letter did not include a transfer or discharge location. (Exhibit A: Notice of Transfer/Discharge)
18. On [REDACTED] 2022, the Appellant's spouse on behalf of the Appellant submitted a request for an administrative hearing contesting the Facility's decision to discharge the Appellant from its care, which OLCRAH granted. (Hearing Record)
19. On [REDACTED], 2022, the OLCRAH held an administrative hearing. (Hearing Record)
20. As of [REDACTED] 2022, the Appellant remains hospitalized at the current hospital and is not medically cleared for discharge. The Facility has not received a request from the hospital that the Appellant is medically ready

for discharge. (Director of Social Services Testimony, Director of Nursing Services, and Appellant's Testimony)

21. The issuance of this decision is timely under Section 19a-535(h)(1) of the Connecticut General Statutes, which requires that the agency issue a decision regarding a transfer or discharge 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 hearing request date is [REDACTED] 2023 and thirty days from [REDACTED] 2022 is [REDACTED] 2023. This hearing decision is due [REDACTED] 2023; therefore, the decision is timely.

CONCLUSIONS OF LAW

1. Title 42 Section 483.5 of the Code of Federal Regulations ("C.F.R.") provides for the following definitions:

For purposes of this subpart, *facility* means a skilled nursing facility (SNF) that meets the requirements of sections 1819(a), (b), (c), and (d) of the Act, or a nursing facility (NF) that meets the requirements of sections 1919(a), (b), (c), and (d) of the Act. "Facility" may include a distinct part of an institution (as defined in paragraph (b) of this section and specified in § 440.40 and § 440.155 of this chapter), but does not include an institution for individuals with intellectual disabilities or persons with related conditions described in § 440.150 of this chapter. For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity that participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution. For Medicare, an SNF (see section 1819(a)(1) of the Act), and for Medicaid, an NF (see section 1919(a)(1) of the Act) may not be an institution for mental diseases as defined in § 435.1010 of this chapter.

Transfer and discharge include movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge do not refer to movement of a resident to a bed within the same certified facility.

Common areas are areas in the facility where residents may gather together with other residents, visitors, and staff or engage in individual pursuits, apart from their residential rooms. This includes but is not limited to living rooms, dining rooms, activity rooms, outdoor areas, and meeting rooms where residents are located on a regular basis.

State Statute 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.

Conn. Gen. Stats. § 19a-535(a)

2. Federal regulation provides as follows:

The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless –

- A. The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- B. The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;
- 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;
- E. The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Non-payment applies if the resident does not submit the necessary paperwork for third party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay for his or her stay. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

F. The facility ceases to operate.

42 C.F.R. § 483.15(c)(1)(i)

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.

Conn. Gen. Stats. § 19a-535(b)

On ██████████ 2022, the facility met the statutory requirement to transfer the Appellant on an emergency basis to the hospital because the welfare, health or safety of the Appellant and individuals in the facility were endangered by the Appellant's aggressive behavior which resulted in police intervention.

3. Federal regulation provides as follows:

If the facility that determines that a resident who was transferred with an expectation of returning to the facility cannot return to the facility, the facility must comply with the requirements of paragraph (c) as they apply to discharges.

42 C.F.R. § 483.15(e)(1)(ii)

Federal regulation provides as follows:

Notice must be made as soon as practicable before transfer or discharge when – The safety of individual in the facility would be endangered under paragraph (c)(1)(i)(C) of this section.

42 C.F.R. § 483.15(c)(4)(ii)(A)

State statute provides as follows:

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.

Conn. Gen. Stats. §19a-535(h)(4)

Federal regulation provides as follows:

Contents of the notice. The written notice specified in paragraph (c)(3) of this section must include the follows:

- i. The reason for transfer or discharge;
- ii. The effective date of transfer or discharge;
- iii. The location to which the resident is transferred or discharged;
- iv. A statement of the resident's appeal rights, include the name, address (mailing and email), and telephone number of the entity which receives such requests; and information on how to obtain an appeal form and assistance in completing the form and submitting the appeal hearing request;
- v. The name, address (mailing and email) and telephone number of the Office of the State Long-Term Care Ombudsman;
- vi. For nursing facility residents with intellectual and developmental disabilities or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with developmental disabilities established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (Pub. L. 106-402, codified at 42 U.S.C. 15001 et seq.); and

- vii. For nursing facility resident with a mental disorder or related disabilities, the mailing and email address and telephone number of the agency responsible for the protection and advocacy of individuals with a mental disorder established under the Protection and Advocacy for Mentally Ill Individuals Act.

42 CFR § 483.15(c)(5)

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 residents 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 Appellant 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 resident. 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.

Conn. Gen. Stats. §19a-535(c)(1)

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.

Conn. Gen. Stat. § 19a-535(k)

The Facility failed to meet the statutory requirements for a written notice of transfer as required by Section 19a-535(c)(1) of the Connecticut General Statutes. The Facility's belief the Appellant would not return because the Appellant's spouse would seek alternative placement does not negate the Facility's responsibility to issue a Notice of Transfer as soon as practicable under an emergency transfer.

The Facility has not met the statutory requirement for the written notice of discharge issued on [REDACTED] 2022. The notice failed to list the location to which the Appellant is to be discharged. The Facility chose to issue the Notice of Intent to Transfer or Discharge Appellant only after the Facility received a request from the Appellant's spouse to readmit the Appellant to its facility.

Additionally, the hearing record is void of any testimony or documentation indicating the notice to involuntarily discharge the Appellant from the Facility was uploaded to the Internet web site portal maintained by the State Ombudsman.

DECISION

The Appellant's appeal is DENIED with regards to the Appellant's transfer to the hospital based on an emergency discharge.

Although the Facility failed to send the proper Notice of Emergency Discharge, there is no equitable remedy for its failure to comply with this section of the state statute as the Appellant has since been transferred from the original hospital on two separate occasions to two other hospitals and is currently not medically ready for discharge from the hospital to any facility.

Lisa A. Nyren
Lisa A. Nyren
Fair Hearing Officer

CC: [REDACTED], Administrator, [REDACTED]
[REDACTED], Ombudsman, [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.