

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

[REDACTED]
SIGNATURE CONFIRMATION

CASE ID # [REDACTED]
CLIENT ID # [REDACTED]
REQUEST # [REDACTED]

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Administrator

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED], [REDACTED], (the "Facility"), a skilled nursing facility ("SNF"), issued [REDACTED] (the "Appellant") a Notice of Discharge stating that the Facility would be involuntarily discharging the Appellant on [REDACTED], because the Appellant's current medical condition does not meet the need for skilled nursing care and the health and safety of individuals in the facility is endangered due to the Appellant's actions.

On [REDACTED], the Appellant requested an administrative hearing to contest the Facility's proposed discharge.

On [REDACTED], the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing at the Facility for [REDACTED]

On [REDACTED], in accordance with sections 19a-535 and 4-176e to 4-184, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing at the Facility. The following individuals were present at the hearing:

[REDACTED], the Appellant
[REDACTED], the Appellant's sister
[REDACTED] [REDACTED] Director of Social Work
[REDACTED], [REDACTED] Administrator
Sara Hart, Hearing Officer

STATEMENT OF THE ISSUE

The issue is whether the Facility acted in accordance with state law and federal regulation when it proposed to involuntarily discharge the Appellant.

FINDINGS OF FACT

1. The Appellant is 70 years old (DOB [REDACTED]) and a Medicaid recipient. He receives monthly Social Security Income. (*Appellant's Testimony*)
2. On [REDACTED], the Facility admitted the Appellant. ([REDACTED] *Testimony*)
3. On [REDACTED], the Appellant underwent right shoulder replacement surgery and remained hospitalized for several days. (*Appellant's Testimony*)
4. On [REDACTED] the Facility re-admitted the Appellant following shoulder surgery. ([REDACTED] *Testimony*)
5. The Facility allows smoking on the premises. The Facility's smoking policy prohibits residents from possessing smoking materials at any time other than designated and supervised smoking breaks. Smoking materials are locked and distributed by Facility security staff during designated times and residents must return all smoking materials to staff upon return from smoking breaks. Smoking materials are not permitted in resident rooms. ([REDACTED] *Testimony*)
6. The Facility informs residents of the smoking policy upon admission, and residents must sign an agreement acknowledging that the Facility has informed them of the policy. ([REDACTED] *Testimony*)
7. The Facility informed the Appellant of the smoking policy upon admittance, and he signed an agreement acknowledging he was aware of the Facility's smoking policy. (*Appellant's Testimony*)

8. The Appellant kept cigarettes and a lighter in a drawer in his room at the Facility. *(Appellant's Testimony)*
9. On [REDACTED] the Facility searched the Appellant's room and located prohibited items including e-cigars and vape canisters. *(Exhibit 4: Resident Room Search)*
10. On [REDACTED] the Appellant's approval for NF LOC expired. The Facility has not submitted a subsequent request for approval of NF LOC because the Appellant does not require care at the level of a SNF. [REDACTED] *Testimony)*
11. On [REDACTED] the Facility searched the Appellant's room and located empty cigarette boxes, a lighter, and used cigarette butts. *(Exhibit 4)*
12. On [REDACTED] the Facility searched the Appellant's room and located an empty cigarette box and three lighters. *(Exhibit 4)*
13. On April 19, 2023, the Facility searched the Appellant's room and located a lighter. *(Exhibit 4)*
14. On [REDACTED] the Facility searched the Appellant's room and located a cigarette box containing three cigarettes. *(Exhibit 4)*
15. The Facility confiscated the prohibited smoking materials and re-educated the Appellant regarding the Facility's smoking policy after each separate room search. [REDACTED] *Testimony)*
16. On [REDACTED] the Facility issued a Notice of Discharge to the Appellant that indicated it would discharge the Appellant to the [REDACTED] Shelter and Housing Program at [REDACTED], due to failure to comply with the Facility's smoking and contraband agreement and improved health. *(Exhibit 2: Notice of Intent to Discharge)*
17. On [REDACTED] the Facility electronically reported the Appellant's proposed discharge to the State Ombudsman portal. *(Exhibit 2)*
18. On [REDACTED] the Facility provided a written preliminary discharge plan to the Appellant that was developed and signed by the Facility's medical director, administrator, nursing director, and social worker. The preliminary discharge plan addressed the feasibility of the Appellant's placement in proximity to relatives, an assessment of the Appellant's acceptability of the placement, an evaluation of the potential medical, social, and psychological effects of the discharge on the Appellant, measures taken to minimize such effects, and an outline of the care and services the Appellant would receive upon discharge. *(Exhibit 3: Preliminary Discharge Plan)*

19. The Appellant is independent in his Activities of Daily Living (“ADLs”). The Facility provides the Appellant with physical therapy 2-3 times per week and medication management. (*Facility’s Testimony, Appellant’s Testimony*)
20. On [REDACTED] the Appellant requested an administrative hearing to contest the Facility’s intent to discharge him to a homeless shelter. (*Hearing Record*)
21. On [REDACTED] the Appellant suffered an injury to his right foot and began using a walker and wheelchair for assistance with ambulation. (*Appellant’s Testimony*)
22. On [REDACTED] the Appellant visited the [REDACTED] Emergency Department and was diagnosed with acute pain of the right shoulder, acute right ankle pain, and right foot pain. Imaging of the Appellant’s right foot and ankle did not indicate any fractures and the Appellant was scheduled for a follow-up Orthopedic appointment on [REDACTED] (*Exhibit 5: [REDACTED] After Visit Summary, [REDACTED] Testimony*)
23. The Appellant does not require the services of a skilled nursing facility. He wishes to be discharged to a community setting with physical therapy and medication management services. (*Appellant’s Testimony*)
24. The issuance of this decision is timely under Connecticut General Statutes 19a-535(h)(1) which requires that the Department issue a decision not later than thirty days after the date on which the hearing record closed or not later than sixty days after the date of the hearing request. The Appellant requested a hearing on [REDACTED] On [REDACTED] OLCRAH held a hearing and the hearing record closed. Sixty days from [REDACTED] is [REDACTED] Thirty days from [REDACTED] is [REDACTED] therefore this hearing decision is due no later than [REDACTED] and is timely.

CONCLUSIONS OF LAW

1. Section 19a-535(h)(1) of the Connecticut General Statutes authorizes the Commissioner of Social Services or the commissioner’s designee to hold a hearing to determine whether a transfer or discharge is being affected in accordance with this section.

Section 19a-535(a)(4) of the Connecticut General Statutes provides “discharge” means the movement of a resident from a facility to a non-institutional setting.

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

2. Section 19a-535(b) of the Connecticut General Statutes provides in relevant part that 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 section 17b-360, or the health or safety of individuals in the facility is endangered. In each case, a physician shall document the basis for transfer or discharge in the resident's medical record. In each case where the welfare, health or safety of the resident is concerned the documentation shall be by the resident's physician.

Title 42 of the Code of Federal Regulations ("CFR") § 483.15(c)(1)(i)(B) provides that 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 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.

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

The Appellant's failure to comply with the smoking and contraband policy endangers the health and safety of individuals in the Facility.

3. Section 19a-535(c)(1) of the Connecticut General Statutes provides that 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 know, of the proposed transfer or discharge, the reasons therefore, 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 Office of Protection and Advocacy for Persons with Disabilities. 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.

Section 19a-535(k) of the Connecticut General Statutes provides 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.

The Facility complied with regulations and electronically reported the involuntary transfer/discharge to the State Ombudsman portal.

The Facility correctly provided the Appellant with a Discharge Notice 30 days prior to the proposed discharge date. The Notice correctly included the effective date of the discharge, the reasons for the discharge, the location to which the Appellant would be discharged, the State of Connecticut Ombudsman information, and the Appellant's appeal rights.

4. Section 19a-535(e) of the Connecticut General Statutes provides that 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 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 which 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 if the discharge plan was prepared by the medical director, to the resident or the resident's guardian or conservator, if any or legally liable relative or other responsible party, if known.

42 C.F.R. § 483.15(c)(4)(i) provides that before a facility transfers or discharges a resident, the facility must – (i) Except as specified in [paragraphs \(c\)\(4\)\(ii\)](#) and [\(8\)](#) of this section, the notice of transfer or discharge required under this section must be made by the facility at least 30 days before the resident is transferred or discharged.

42 C.F.R. § 483.15(c)(4)(ii) provides notice must be made as soon as practicable before transfer or discharge when – (C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under [paragraph \(c\)\(1\)\(i\)\(B\)](#) of this section.

The Facility correctly provided a written discharge plan to the Appellant at least 30 days prior to the Appellant's proposed discharge date.

The Facility's proposal to discharge the Appellant complies with state statutes and federal regulations.

DECISION

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


Sara Hart
Hearing Officer

CC: [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.