

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

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

Case #: ██████████
Client ID #: ██████████
Request #: 221471

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2023, ██████████ (the “Facility”), a skilled nursing facility (“SNF”) issued ██████████ (the “Appellant”) a Notice of Discharge stating that the Facility would be involuntarily discharging her from care on ██████████ 2023, because of improved health as determined by Ascend/Maximus.

On ██████████ 2023, the Appellant requested an Administrative Hearing to contest the Facility’s proposed discharge.

On ██████████ 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling an Administrative Hearing for ██████████ 2023.

On ██████████ 2023, in accordance with Connecticut General Statutes § 19a-535 and § 4-176e to § 4-189, inclusive, OLCRAH held an Administrative Hearing in person at the Facility.

The following individuals participated in the hearing:

██████████ Appellant
██████████, Facility Social Worker
Jessica Gulianello, Hearing Officer

The hearing record remained open for one business day to allow the Facility time to submit additional information. Additional documents were received and on ██████████ 2023, the hearing record closed accordingly.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Facility acted in accordance with state law when it proposed to discharge, involuntarily, the Appellant from the Facility due to improved health.

FINDING OF FACTS

1. The Appellant is ██████████ (██████) years old (D.O.B. ██████████). (*Appellant's Testimony*)
2. The Appellant was ██████████ in the geographical area of ██████████. (*Appellant's Testimony*)
3. In ██████████ 2023, the Appellant developed ██████████. The ██████████ impacted the Appellant's ability to ██████████ and resulted in hospitalization. (*Hearing Record*)
4. On ██████████ 2023, the Appellant was discharged from the hospital and admitted to the Facility for rehabilitation. (*Facility Testimony*)
5. The Appellant's medical history includes but is not limited to the following diagnoses:
██
██
██
██
██
██
██
(*Exhibit A: Physician's Orders dated ██████████ 2023, Facility Testimony*)
6. The Appellant's current PRN medications include but are not limited to the following:
██████████ ██████████ ██████████ ██████████ ██████████ ██████████
██
██
██
(*Exhibit A: Physician's Orders dated ██████████/2023*)
7. The Appellant receives ██████████ treatment. (*Exhibit 1: Discharge Plan signed ██████████ 2023*)

8. The Appellant is not currently being treated for an acute medical condition. (*Facility Testimony*)
9. In █████ 2023, the Facility submitted a Nursing Facility Level of Care (“NFLOC”) referral to the Department of Social Services’ contracted Medicaid authorization agency, Ascend/ (“Maximus”). (*Facility Testimony*)
10. Maximus subsequently issued a Notice of Action (“NOA”) denying the NFLOC as not medically necessary for the Appellant. (*Facility Testimony*)
11. On █████ 2023, an Administrative Hearing was held to dispute the above-noted action (NFLOC denial). (*Facility Testimony*)
12. On █████ 2023, the OLCRAH issued a decision upholding the NFLOC denial as determined by Maximus. (*Facility Testimony*)
13. The Appellant is currently independent with her Activities of Daily Living (“ADL’s”). She does not require daily hands-on assistance with bathing, dressing, eating, toileting, continence, transferring, or mobility. (*Exhibit A: 30 – Day Summary Lookback dated █████/2023, Appellant’s Testimony*)
14. The Appellant utilizes a walker for assistance with mobility/transfer from the bed to the bathroom in the morning (after waking) due to initial body stiffness to ensure safety and balance. (*Appellant’s Testimony*)
15. The Appellant is not currently participating in therapy at the Facility. (*Facility Testimony*)
16. The Appellant was working collaboratively with Money Follows the Person (“MFP”) to secure housing in the community. The Appellant was approved for the Rental Assistance Program (“RAP”) and received a Housing Voucher for Section 8 that remains valid until █████ 2023. The Appellant located an apartment for rent and applied, but the approval process remains pending. (*Appellant’s Testimony*)
17. On █████ 2023, the Facility determined that the Appellant no longer required the services of the Facility due to improved health. The Facility issued the Appellant a Notice of Discharge accompanied by a Discharge Plan; however, the proposed discharge location was subsequently rescinded and modified. (*Appellant’s Testimony, Facility Testimony*)
18. On █████ 2023, the Facility issued the Appellant an amended 30-day Notice of Intent to Discharge (the “Discharge Notice”) authorized by the LNHA, Administrator to the Appellant stating the intent to involuntarily discharge her on █████ 2023, more than 30 days from the date of the notice. In the absence of any known community-based residency, the Discharge Notice states the Appellant will be discharged to █████, a █████ shelter, located at █████

██████████. The Discharge Notice further gave the Appellant information about her appeal rights. (*Exhibit 1: Discharge Notice, ██████████ 2023, Exhibit B: Email Correspondence from Facility Social Worker dated ██████████ 2023*)

19. ██████████ provides services that assist individuals with housing such as security deposits, rental assistance, money management, etc. (*Exhibit B: Email Correspondence from Facility Social Worker dated ██████████ 2023*)
20. The Facility electronically sent a copy of the Discharge Notice to the LTC Ombudsman electronically on the LTCOP Involuntary Discharge Portal. (*Exhibit A: Discharge Notice, Facility Testimony*)
21. On ██████████ 2023, the Facility also provided the Appellant with a Discharge Plan. The Discharge Plan was signed by the SNF, MD. “Dr. ████” as well as the Facility Administrator, the Facility Director of Nursing, and the Facility Social Worker. The Discharge Plan outlined the recommended discharge setting as ██████████, a ██████████ shelter, located in the city of ██████████. The plan identifies measures to minimize the proposed discharge's disruptive effects, including but limited to assistance with the intake process at ██████████ by the Facility social work staff, appointment set up with a PCP for continued medical services including but not limited to a ██████████ ██████████ program, referrals to community-based providers and resources, as well as other service agencies to assist the Appellant with transition planning. (*Exhibit 1: Discharge Plan, signed ██████████ 2023, Facility Testimony*)
22. The issuance of this decision is timely under Connecticut General Statutes § 19a-535 (h) (1) which requires that a decision be issued not later than thirty days (30) after the termination of the hearing or not later than sixty (60) days after the date of the hearing request, whichever occurs sooner. Sixty (60) days from ██████████ 2023, is ██████████ ██████████ 2023, and thirty (30) days from ██████████ 2023, is ██████████ 2023. This decision is due no later than ██████████ 2023, and is therefore timely. (*Hearing Record*)

CONCLUSIONS OF LAW

1. Section 19a-535(h)(1) of the Connecticut General Statutes (Conn. Gen. Stat.) authorizes the Commissioner of the Department of Social Services to hold a hearing to determine whether the transfer or discharge is in accordance with this section.
2. Conn. Gen. Stat. 19a-535(a)(4) provides that the term "discharge" means the movement of a resident from a facility to a non-institutional setting.
3. Conn. Gen. Stat. §19a-535(b) provides 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,

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 or the resident's 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 or the resident's advanced practice registered nurse.

Maximus and the Facility both determined that the Appellant is no longer in need of the services of the Facility due to improved health. Consequently, there is a legal basis upon which the Facility may seek to discharge the Appellant.

5. Conn. Gen. Stat. §19a-535(c)(1) provides that before effecting a transfer or discharge of a resident from the facility, the facility shall notify, in writing, the resident and 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 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, an affirmation by the facility that notice of the proposed transfer or discharge has been provided to the State Long-Term Care Ombudsman, in accordance with the provisions of subdivision (3) of this subsection, 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.

The Facility correctly gave the Appellant at least 30-day notice of the proposed discharge date which included the effective date of the discharge, the reason for the discharge, a location to which she would be discharged, her appeal rights, and electronically sent a copy to the Long-Term Care Ombudsman Portal ("LTCOP").

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 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. 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 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 his/her 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.