

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

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

██████████  
██████████  
Request #: 222109

NOTICE OF DECISION

PARTY

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

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

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, the Appellant contacted the OLCRAH and requested for the Administrative Hearing to be rescheduled.

On ██████████ 2023, the OLCRAH issued a notice rescheduling the Administrative Hearing for ██████████ 2023.

On [REDACTED] 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:

[REDACTED], Appellant  
[REDACTED], Facility Director of Social Services  
[REDACTED], Facility Social Worker / Observer  
Jessica Gulianello, Hearing Officer

### **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 [REDACTED] years old (D.O.B. [REDACTED]). (*Exhibit A: Facility Face Sheet, Appellant's Testimony*)
2. The Appellant has been a lifelong resident of [REDACTED]. (*Appellant's Testimony, Department's Testimony*)
3. In [REDACTED] 2022, the Appellant developed an infection in her [REDACTED] that resulted in hospitalization. (*Appellant's Testimony*)
4. On [REDACTED] 2022, the Appellant was discharged from the hospital and admitted to the Facility for rehabilitation. (*Exhibit A: Facility Face Sheet, Exhibit C: Physician's Orders, Appellant's Testimony, Facility Testimony*)
5. The Appellant's medical history includes but is not limited to the following diagnoses:  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. (*Exhibit A: Facility Face Sheet, dated [REDACTED] 2022, Exhibit C: Physician's Orders*)
6. The Appellant's current medications (inclusive of PRNs) but are not limited to the following:  
[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED],

██  
██████████ (Exhibit C: Physician's Orders, dated ██████████ 2023)

7. The Appellant is being treated by a physician (located in the town of ██████████ and not directly affiliated with the Facility) for ██████████. The Appellant reported that her treatment plan is still being developed and that she may require ██████████ surgery. (*Appellant's Testimony*)
8. The Appellant is not being treated for an acute medical condition at the Facility. (*Hearing Record*)
9. On ██████████ 2023, the Facility submitted the Nursing Facility Level of Care ("NFLOC") screening referral form to the Department of Social Services contracted Medicaid authorization agency, Ascend / ("Maximus"). (*Facility Testimony*)
10. On ██████████ 2023, Maximus 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-referenced NFLOC denial. (*Facility Testimony*)
12. 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: Completed Care Details / ADL Charts, dated: ██████████ 2023-██████████ 2023, printed ██████████ 2023, Facility Testimony*)
13. The Appellant utilizes a ██████████ for assistance with mobility. (*Appellant's Testimony*)
14. The Facility will assist the Appellant to obtain medically necessary durable medical equipment (DME) prior to her discharge. (*Facility Testimony*)
15. The Appellant was working with Money Follows the Person ("MFP"); however, she was subsequently discharged from the MFP program following the previously noted NFLOC denial. The Facility has continued to work collaboratively with the Appellant to secure permanent housing in the community including assisting her to get onto the waiting list for Section Eight Housing in the nearby town of ██████████ and checking referral availability for RCH housing. (*Facility Testimony*)
16. 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. (*Appellant's Testimony, Facility Testimony, Hearing Record*)
17. On ██████████ 2023, the Facility issued the Appellant a Notice of Intent to Discharge (the "Discharge Notice") authorized by the attending MD stating the intent to

involuntarily discharge her on [REDACTED] 2023, 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 [REDACTED]. The Discharge Notice further gave the Appellant information about her appeal rights. (*Exhibit 1: Discharge Notice dated [REDACTED] 2023, Exhibit D: Discharge Notice dated [REDACTED] 2023, with the Appellant's handwritten signature of receipt*)

18. [REDACTED] is in the Appellant's town of origin, [REDACTED], where she had resided prior to her admission to the Facility. (*Hearing Record*)
19. The Appellant maintains contact with [REDACTED] who also resides in the town of [REDACTED]. (*Hearing Record*)
20. On [REDACTED], 2023, the Facility electronically sent a copy of the Discharge Notice to the LTC Ombudsman electronically on the LTCOP Involuntary Discharge Portal. (*Exhibit D: Confirmation, dated [REDACTED]/2023, Facility Testimony*)
21. On [REDACTED] 2023, the Facility also provided the Appellant with a Discharge Plan. The Discharge Plan was signed by the attending MD, Dr. [REDACTED], 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 [REDACTED]. The plan identifies measures to minimize the proposed discharge's disruptive effects, including but limited to referrals to community-based providers for mental health services, case management, outpatient substance abuse counseling, medical follow-up appointments, visiting nursing for medical management, and PCA services as well as other service agencies to assist the Appellant with transition planning. (*Exhibit D: Discharge Plan, signed [REDACTED] 2023, Facility Testimony*)
22. On [REDACTED], 2023, the OLCRAH issued a decision upholding the NFLOC denial as determined by Maximus. (*Facility Testimony*)
23. On [REDACTED], 2023, the Appellant was discharged from [REDACTED] therapy. (*Appellant's Testimony, Facility Testimony*)
24. The Appellant is not currently participating in therapy at the Facility. (*Appellant's Testimony, Facility Testimony*)
25. 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 [REDACTED] 2023, is [REDACTED] 2023, and thirty (30) days from [REDACTED], 2023, is [REDACTED], 2023. Therefore, this decision is due no later than [REDACTED], 2023, and is therefore timely. (*Hearing Decision*)

## 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 thirty (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").**

6. 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 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 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 affects. In addition, the plan shall outline the care and kinds of service which 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 and the resident's guardian or conservator, if any, or legally liable relative or other responsible party, if known.

**The Facility's discharge plan contains a written evaluation of the effects of the proposed discharge on the resident and the actions taken to minimize such effects. The discharge plan is also properly signed by the attending MD, the Facility Administrator, the Director of Nursing, and the Facility Social Worker.**

**The Facility's proposal to discharge the Appellant is in accordance with state statutes and is upheld.**

**DECISION**

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

*Jessica Gulianello*

---

**Jessica Gulianello  
Hearing Officer**

Cc:

[REDACTED], Facility Director of Social Services  
[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 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.