

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

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

██████████
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Request #: 225283

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2023, Touchpoints Rehab at Farmington (the “Facility”), a skilled nursing facility (“SNF”) issued ██████████ (the “Appellant”) a Notice of Discharge stating that the Facility would be involuntarily discharging him 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.

9. On ██████████ 2023, the Department of Social services contracted Medicaid authorization agency, Ascend / (“Maximus”) issued a Notice of Action (“NOA”) denying NFLOC as not medically necessary for the Appellant. *(Exhibit B: Notice of Discharge dated ██████████ 2023, Facility Testimony)*
10. The Appellant appealed the NFLOC denial. *(Facility Testimony)*
11. On ██████████ 2023, the OLCRAH had an administrative hearing. *(Facility Testimony)*
12. The OLCRAH issued a decision upholding the NFLOC denial as determined by Maximus. *(Facility Testimony)*
13. 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 Preliminary Discharge Plan. *(Exhibit D: Notice of Discharge dated ██████████ 2023, Preliminary Discharge Plan signed ██████████ 2023, Hearing Record)*
14. On ██████████ 2023, the Appellant appealed the proposed involuntary discharge. *(Exhibit E: Hearing Decision dated ██████████ 2023, Hearing Record)*
15. On ██████████ 2023, the OLCRAH held an administrative hearing. *(Exhibit E: Hearing Decision dated ██████████ 2023)*
16. On ██████████ 2023, the OLCRAH issued a decision granting the Appellant’s appeal based on the following, “The Facility’s Preliminary Discharge Plan does not comply with state statutes. The Facility failed to provide a complete discharge plan to the Appellant that includes relevant factors that affect his adjustment to the move, a written evaluation of the effects of the discharge, the care and kinds of services which the resident shall receive upon discharge, and a statement of actions taken to minimize such effects”. *(Exhibit E: Hearing Decision dated ██████████ 2023)*
17. The Appellant is currently independent with his Activities of Daily Living (“ADL’s”). He does not require daily hands-on assistance with bathing, dressing, eating, toileting, continence, transferring, or mobility. *(Exhibit 1: Completed Care Details dated ██████████ 2023, Hearing Record)*
18. The Appellant is not being treated for an acute medical condition at the Facility. *(Hearing Record)*
19. The Appellant is not currently participating in therapy at the Facility. *(Hearing Record)*
20. 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. *(Exhibit B: Discharge Notice, Exhibit C: Discharge Plan, Hearing Record)*

21. On [REDACTED] 2023, the Facility issued the Appellant a Notice of Intent to Discharge (the "Discharge Notice") authorized by [REDACTED], LNHA Administrator, stating the intent to involuntarily discharge him on [REDACTED], 2023, thirty (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 his appeal rights. *(Exhibit 2: Discharge Notice, dated [REDACTED] 2023, Hearing Record)*
22. The [REDACTED], which borders the Appellant's town of origin. *(Exhibit C: Discharge Plan, signed [REDACTED] 2023)*
23. 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 B: Discharge Notice - dated [REDACTED] 2023, Facility Testimony)*
24. On [REDACTED] 2023, the Facility provided the Appellant with a Discharge Plan. The Discharge Plan was signed by the attending MD, the Facility Administrator, the Facility Director of Nursing, and the Facility Social Worker. The Discharge Plan outlined the recommended discharge setting as the [REDACTED]. The plan identifies measures to minimize the proposed discharge's disruptive effects, including pre-discharge counseling to aid the Appellant with transition planning, assistance with the shelter referral, and setting up follow-up medical appointments with nearby providers in the community. [REDACTED] offers comprehensive case management services including but not limited to assistance with housing, meals, medication management, and if needed behavioral health appointments, home health services, etc. *(Exhibit C: Discharge Plan, signed [REDACTED] 2023, 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 he would be discharged, his 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]

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.