

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

██████████ 2016
Signature confirmation

Client: ██████████
Request: 735879

NOTICE OF DECISION

PARTIES

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PROCEDURAL BACKGROUND

On ██████████ 2015, the ██████████ (the "Facility"), a skilled nursing facility, issued ██████████ (the "Appellant") a notice stating that the Facility would be involuntarily discharging the Appellant to a skilled nursing facility to be determined on ██████████ 2015, for the reason that the safety of other residents was endangered.

On ██████████ 2015, Attorney ██████████, in his capacity as the Appellant's court-appointed legal representative, filed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to contest the Facility's proposal to involuntarily discharge the Appellant.

On ██████████ 2015, the OLCRAH issued a notice to the Parties scheduling an administrative hearing for ██████████ 2015. Due to a scheduling error, the administrative hearing did not go forward on that date.

On ██████████ 2016, in accordance with sections 19a-535 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing at the Facility. The following individuals attended the hearing:

██████████ Appellant
██████████ Appellant's conservator of person
██████████, Appellant's counsel
██████████, Administrator, Facility's representative
██████████ Director of Nursing, Facility's witness
██████████, Social Worker, Facility's witness
Eva Tar, Hearing Officer

The administrative hearing record closed on ██████████ 2016.

STATEMENT OF ISSUE

The issue is whether the Facility complied with the statutory requirements for an involuntary discharge of the Appellant to a skilled nursing facility.

FINDINGS OF FACT

1. The Facility is a skilled nursing facility. (Facility's Exhibit B: Notice of Discharge w/Discharge Plan and Summary, varying dates)
2. On ██████████ 2005, the Facility admitted the Appellant as a patient for a short-term rehabilitative stay. (Facility's witness's testimony)(Facility's Exhibit C: Review, undated)
3. Since his 2005 admittance to the Facility, the Appellant has resided at the Facility. (Facility's witness's testimony)
4. The Appellant has the following diagnoses: diabetes mellitus, mononeuropathy, chronic ulcer to the foot, A Fib, HTN, Neuropathy, CAD, Nicotine dependence, CKD stage 3, Depression, Hiatal Hernia, GERD, CHF, Gout, COPD, Fx of right pubis, Anemia, Hypothyroidism, Hyperlipidemia, Anemia, Dementia with behavior, Seizures, PVD, Arthritis, Urinary Retention, GI Bleed, and Cerebral Ifarction. (Facility's Exhibit C)
5. The Appellant is in a wheelchair, but he is occasionally able to stand with support. (Facility's witness's testimony)
6. The Appellant is a cigarette smoker. (Appellant's testimony)
7. The Appellant is able to leave the Facility's building to go outside unescorted and to go for medical appointments. (Facility's witness's testimony)
8. The Appellant collects cans and comes and goes as he pleases. (Facility's witness's testimony)

9. The Facility keeps smoking materials for their residents who smoke in a secure location designated at the Facility. (Facility's Exhibit A: *Smoking (Connecticut Facilities)*, [REDACTED]/15)
10. Any new cigarettes, igniting and smoking materials must be turned over to Facility staff immediately upon arrival to the Facility. (Facility's Exhibit A)
11. The Facility signs out two cigarettes to the Appellant during the designated daily smoking times of 9:30 a.m., 1:30 p.m., 3:30 p.m., and 7:30 p.m.; the staff supervise the smoking group outside. (Facility's witness's testimony)
12. The Facility's staff has educated the Appellant regarding the Facility's smoking policy on multiple occasions; the Facility's staff has educated the Appellant's conservator, visitors, and drivers, requesting that these individuals do not give the Appellant cigarettes and lighters. (Facility's witness's testimony)(Facility's Exhibit C)
13. In 2015, the Appellant has been found to have smoking materials (that had not been issued to him by the Facility at the appropriate daily smoking times) on his person or in his room on the following dates: [REDACTED] 2015; [REDACTED] 2015; [REDACTED] 2015; [REDACTED] 2015; [REDACTED] 2015; [REDACTED] 2015; [REDACTED] 2015; and [REDACTED] 2015. (Facility's Exhibit C)
14. The Appellant regularly acquires cigarettes and lighters from outside of the Facility. (Facility's witness's testimony)
15. The Facility's administrator and the Facility's director of nursing are concerned that patients may find and make use of the Appellant's hidden cigarettes and lighters. (Facility's administrator's testimony)(Facility's witness's testimony)
16. The Appellant does not reside in the locked ward section of the Facility; the room is accessible by other patients. (Facility's witness's testimony)
17. A transfer to a locked ward section of the Facility is not appropriate to the Appellant as least restrictive setting to treat his medical conditions. (Facility's witness's testimony)
18. The Appellant scored 15 out of a score of 15 on a Bims test; the test assesses memory. A score of 15 is a good score. (Facility's witness's testimony)
19. The Appellant has difficulty assessing whether an activity is safe or not safe. (Appellant's conservator's testimony)
20. On [REDACTED] 2015, the Facility issued a *Notice of Discharge* to the Appellant, stating that he would be discharged to a skilled nursing facility to be determined on [REDACTED] 2015, as the safety of other residents was endangered. (Facility's Exhibit B)

21. On [REDACTED] 2015, the Facility completed a *Discharge Plan and Summary*, signed by [REDACTED], the Facility's medical director and the Appellant's attending physician. (Facility's Exhibit B)(Facility's administrator's testimony)
22. The Facility staff has investigated the Appellant's potential placement at skilled nursing facilities which offer smoking accommodation that are physically near the Appellant's conservator; the Appellant's conservator did not permit the Facility to share relevant information about the Appellant with the facilities. (Facility's witness's testimony)
23. The Facility staff has performed assessments of the potential medical, social, and psychological effects of the involuntary discharge on the Appellant and has taken measures to minimize those effects. (Facility's Exhibit B)

CONCLUSIONS OF LAW

1. Subsection (h) of Section 19a-535 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 of a nursing facility is being effected in accordance with this section.
2. "Discharge" means the movement of a resident from a facility to a non-institutional setting. Conn. Gen. Stat. § 19a-535 (a)(4).
3. 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. In each case where the welfare, health or safety of the resident is concerned the documentation shall be by the resident's physician. Conn. Gen. Stat. § 19a-535 (b).
4. The Appellant's habit of acquiring and concealing cigarettes and lighters on his person and in his room are a danger to the health and safety of individuals in the Facility.
5. In documenting the basis for the proposed discharge of the Appellant in his medical records, the Facility complied with the requirement in section 19a-535(b) of the Connecticut General Statutes.

6. 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 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. Conn. Gen. Stat. § 19a-535 (c)(1).
7. The Facility complied with the requirements of section 19a-535 (c)(1) with respect to providing notice of the proposed involuntary discharge to a resident.
8. 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 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

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, 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, 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 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.