

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

██████████ 2016
Signature Confirmation

Client ID # ██████████
Request # 744615

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2015, ██████████ (the "Facility") issued a 30 Day Discharge Notice to ██████████ (the "Appellant") stating its intent to involuntarily discharge the Appellant on or following 30 days from the date of its notice as it was necessary for his welfare and the Facility could not meet his needs.

On ██████████ 2016, the Appellant requested an administrative hearing to contest the Facility's proposed discharge.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing at the Facility for ██████████ 2016.

On ██████████ 2016, in accordance with Connecticut General Statutes, sections 19a-535 and 4-176e to 4-184, inclusive, OLCRAH held an administrative hearing to address the Facility's intent to discharge the Appellant.

The following individuals were present at the hearing:

██████████, the Appellant
██
██
Maureen Foley-Roy, Hearing Officer

The hearing record remained open for the submission of additional evidence. On ██████████ 2016, the hearing record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether the Facility acted in accordance with state law when it proposed to involuntarily discharge the Appellant to another facility.

FINDINGS OF FACT

1. On ██████████ 2014, the Appellant was admitted to the Facility for long term care. His primary diagnosis was alcoholic cirrhosis of the liver without ascites. (Exhibit 6: Admission Record)
2. The Appellant has been in ill health for a number of years and had lived at the Facility in the past. (Appellant’s Testimony)
3. The Facility manages the administration of all of the Appellant’s medication. (Appellant’s testimony and Administrator’s testimony)
4. The Appellant sometimes requires set up with dressing. He requires supervision with hygiene and bathing and is independent after set up with meals. The Appellant toilets and ambulates independently but is a fall risk. (Exhibit 2c- Care Plan, Nursing Section)
5. The Appellant has been diagnosed with depression and ██████████ comes to the Appellant at the Facility three days a week. (Administrator’s testimony)
6. The Facility is a non-smoking facility and has been for at least three years. Residents of the Facility are not permitted to smoke anywhere in the building or on the grounds. (Administrator’s testimony)
7. On ██████████ 2014, Facility staff discussed the risks of smoking with the Appellant. (Exhibit 2c)
8. On ██████████ 2015, the Appellant was observed smoking on the Facility grounds. (Exhibit 2c)
9. On ██████████ 2015, facility staff educated the Appellant regarding the Facility’s

nonsmoking policy and the consequences for being non-compliant with the policy.
(Exhibit 2c)

10. On [REDACTED] 2015, the Facility staff offered the Appellant use of the nicotine patch, which he declined. (Exhibit 2c and Social Service Director's testimony)
11. On [REDACTED] 2015, the Facility issued a 30 day notice of transfer or discharge. (Exhibit 2-d: Care Plan, Social Services Section)
12. On [REDACTED] 2015, an administrative hearing was held regarding the Appellant's appeal of the discharge notice. (Exhibit 2-d)
13. On [REDACTED] 2015, the Appellant was observed smoking on the Facility's grounds: Exhibits 3 and 5: Statements)
14. On [REDACTED] 2015, a lighter and a partially smoked cigarette were found in the Appellant's room. (Exhibit 4: progress notes)
15. On [REDACTED] 2015, four partially smoked cigarettes were found in the Appellant's room. (Exhibit 4)
16. On [REDACTED] 2015, the Appellant was smoking a cigarette in the parking lot. (Exhibit 3)
17. On [REDACTED] 2015, the Appellant and the Facility received the administrative hearing decision ordering the Facility to withdraw the notice of intent to discharge or transfer because a physician had not developed a discharge plan. (Exhibit 4: progress notes)
18. On [REDACTED] 2015, the Facility's medical director, social service director and director of nursing signed off on a discharge plan for the Appellant in which arrangements were made for him to continue with his plan of care and psychiatric services at a facility within two miles which allows supervised smoking. (Exhibit 1: Discharge Plan)
19. On [REDACTED] 2015, the Facility issued a 30 day notice of intent to transfer or discharge to the Appellant because a transfer was necessary for his welfare. (Appellant's Exhibit A: 30 Day Notice)
20. On [REDACTED] 2016, the Appellant was seen in the Facility's parking lot attempting to gain entrance to unlocked vehicles. (Exhibit 5: Employee statements)
21. On [REDACTED] 2016, the Appellant was observed smoking on the Facility grounds. (Exhibit 5)

CONCLUSIONS OF LAW

1. Section 19a-535 of the Connecticut General Statutes authorizes the Commissioner of the Department of Social Services to hold a hearing to determine whether the transfer or discharge is being affected in accordance with this section.
2. Section 19a-535(a)(4) of the Connecticut General Statutes provides that the term “discharge” means the discharge of a resident from a facility to another institution or a non-institutional setting.
3. Section 19a-535(b) of the Connecticut General Statutes provides in part: 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 non-payment 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.

The Facility complied with the requirement in section 19a-535(b) of the Connecticut General Statutes in documenting the basis for the discharge in the Appellant’s medical record.

4. Section 19a-535(c) of the Connecticut General Statutes provides in part: 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 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 for good cause, that the resident may represent herself or himself or be represented by legal counsel, a relative, a friend or other spokesperson, and information as to bed hold and readmission policy when required in accordance with section 19a-537, as amended by this act. The notice shall also include the name, mailing address, and telephone number of the States Long Term Care Ombudsman. 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.

The Facility was correct and in accordance with section 19a-535(c) of the Connecticut General Statutes when it gave the Appellant at least 30 days notice of the proposed discharge and notified the Appellant in writing of the proposed discharge.

5. Section 19a-535 (e) of the Connecticut General Statutes provides that: Except in an emergency, (2) or in the case of transfer to a hospital, or (3) in the case of transfer into or out of a Medicare distinct part within the same institution, 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 the resident shall receive upon transfer or discharge. Not less than thirty days prior to the 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.
6. **The Facility was correct and in accordance with section 19a-535(e) of the Connecticut General Statutes when it issued the discharge plan.**

The Facility provided the Appellant with a discharge plan that addressed all statutory requirements involved in an involuntary discharge of a resident.

The Facility has provided to the Appellant a discharge plan discussing relevant factors affecting the Appellant's adjustment to the transfer, the care he will require and measures to be taken to minimize the effect of an involuntary transfer.

The Appellant's violations of the Facility smoking policy and being in restricted areas endanger the health and safety of himself and other individuals in the facility.

7. **The Facility's proposal to discharge the Appellant complies with state statutes.**

DISCUSSION

The Facility where the Appellant has been residing is a non-smoking facility and the Appellant continues to smoke on the grounds. Although he considers this Facility his home and does not want to leave, his continued smoking at a non-smoking facility endangers both himself and other residents. It is reasonable for the Appellant to reside in a facility which allows smoking and would provide the Appellant with the same level of care and services that he has been receiving at [REDACTED]. The Appellant's physician has signed off on a plan which would transfer the Appellant to a facility where he could receive the identical care that he is currently receiving. Arrangements have been made for the Appellant to continue with psychiatric services. The new facility is within 2 miles of the Appellant's current residence and would not affect visits by his family. The Facility provided the Appellant with a discharge plan that addressed all statutory requirements involved in an involuntary discharge of a resident.

The Facility has provided to the Appellant a discharge plan discussing relevant factors affecting the Appellant's adjustment to the transfer, the care he will require and measures to be taken to minimize the effect of an involuntary transfer. The Facility's proposal to discharge the Appellant complies with state statutes.

DECISION

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

Maureen Foley-Roy
Maureen Foley-Roy,
Hearing Officer

cc: Barbara Cass, Section Chief, Facility Licensing and Investigations Section,
Connecticut Department of Public Health, 410 Capitol Avenue, MS #12HSR
P.O. Box 340308, Hartford, CT 06134-0308

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, 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 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.