

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

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

CL ID # ██████████  
Request ID #759222

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2016, ██████████ (the "Facility") issued a letter proposing to involuntarily discharge ██████████ (the "Appellant"), from its care within 30 days of her receipt of the letter.

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 for ██████████ 2016.

On ██████████ 2016, in accordance with Connecticut General Statutes § 19a-535 and § 4-176e to § 4-189, inclusive, OLCRAH held an administrative hearing at ██████████ ██████████.

The following individuals were present at the hearing:

██████████ Appellant  
Kevin Cleary, Administrator, ██████████  
Lori Drohan, Director of Social Services, ██████████  
Jessica Poruban, Transition Coordinator, Money Follows the Person, Agency on  
Aging  
Noelle Demarco, Specialized Care Manager, Money Follows the Person, Agency on  
Aging  
Marci Ostroski, 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 denial of nursing home approval for not meeting nursing home criteria.

### **FINDING OF FACTS**

1. The Appellant is a 55 year old individual (D.O.B. ██████████/61). (Appellant's testimony)
2. Prior to her admission to the Facility the Appellant resided in her parent's home. (Appellant's testimony)
3. On ██████████ 2015 the Appellant entered the Facility for rehabilitation subsequent to a fall at home in which she sustained a subdural hematoma. She also was diagnosed with aspiration pneumonia, ETOH withdrawal, and acute renal failure. (Appellant's testimony, Director of Social Services testimony)
4. The Appellant's current diagnoses are mild depression and anxiety. (Director of Social Services testimony)
5. The Appellant receives supervision during bathing and medication management. She does not require hands on assistance with her activities of daily living. (Appellant's testimony)
6. The Appellant has no income. (Appellant's testimony)
7. The Appellant's stay is being covered under Medicaid. (Director of Social Services Testimony)
8. The Appellant is actively working with Money Follows the Person to discharge from the facility to her own apartment. She has received her Rental Assistance Program certificate. (Specialized Care Manager, Money Follows the Person testimony)

9. On [REDACTED] 2016 the Appellant was denied nursing home approval from Ascend, the Department's contractor for level of care determinations. (Director of Social Services testimony)
10. On [REDACTED] 2016 the Facility issued a 30 Day Discharge Notice (the "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 the resident was denied nursing home approval from Ascend management. The notice states the Appellant will be discharged to the home of her brother in [REDACTED]. (Ex. 1: Notice of Discharge dated [REDACTED]/16)
11. The Appellant is currently appealing the denial from Ascend. Pending the outcome of that hearing, the Facility has continued to receive payment from Medicaid for the Appellant's stay. (Administrator testimony)
12. The Facility discussed with the Appellant a plan to discharge her to an extended stay hotel with visiting nurse, occupational therapy, and physical therapy services. (Director of Social Services testimony)
13. Neither the Appellant's personal physical nor the medical director developed or contributed to the development of the discharge plan. (Director of Social Services testimony)
14. The Facility has not issued a written discharge plan to the Appellant or her doctor. (Administrator testimony)

### **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.

4. The Appellant is not a self-pay resident with an arrearage of more than fifteen days.
5. Because Ascend management determined the Appellant is no longer in need of the services of the facility due to improved health, there is a legal basis upon which the Facility may seek to transfer 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, 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.
6. 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 discharge, a location to which she would be discharged and her appeal rights.
7. Conn. Gen. Stat. § 19a-535(e) 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 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.

8. The Facility's proposal to discharge the Appellant does not comply with state statutes because there was no discharge plan presented.

### **DISCUSSION**

The Facility did not present a written discharge plan as required by Conn. Gen. Stat. §19a-535(e). Statute provides that 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. The Facility failed to provide a copy of the discharge plan to the Appellant's personal physician, to the Appellant or the Appellant's Power of Attorney. Therefore, since the Facility did not develop a written discharge plan, the Facility may not discharge the Appellant based on the 30 day notice sent on [REDACTED] 2016.

**DECISION**

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

**ORDER**

1. The Facility is ordered to rescind its proposal to involuntarily discharge the Appellant from its care.
2. No later than [REDACTED] 2015, the Facility will submit to OLCRAH proof of compliance with this order.

Marci Ostroski  
**Marci Ostroski**  
**Hearing Officer**

Cc: Kevin Cleary, Administrator, West River Rehab Center, 245 Orange Avenue, Milford, CT 06461

Desiree Pina, LTC Ombudsman Program, Department of Social Services, 55 Farmington Avenue, Hartford, CT 06105

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 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.