

STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATION AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CONNECTICUT 06105-3730

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

CL ID # ██████████  
Request ID #764340

NOTICE OF DECISION

PARTY

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██████████  
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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 his 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  
Nancy Ptak, Financial Counselor, ██████████  
Shenell Charles, Director Social Service, ██████████  
Anthony Martinelli, Business Office Manager, ██████████  
Patrick McDonnell, Center Executive Director, ██████████  
Martine Liberte, Transition Coordinator, Money Follows the Person (MFP)  
Miklos Mencseli, Hearing Officer

### **STATEMENT OF THE ISSUE**

The issue to be decided is whether the Facility's proposal to involuntarily discharge the Appellant complies with all applicable laws.

### **FINDING OF FACTS**

1. On ██████████ 2015, the Appellant entered the Facility. (Testimony)
2. The Appellant entered the facility due to an infection to his leg. (Testimony)
3. The Appellant was approved initially for a short term stay. (Testimony)
4. On ██████████ 2016, the Facility sent the Appellant a 30 day discharge notice. The scheduled discharge date was ██████████ 2016. (Exhibit 1: discharge notice dated ██████████-16)
5. The discharge notice proposed to discharge the Appellant to a shelter in the Greater New Haven area. (Exhibit 1)
6. The Facility has spoken to the Appellant regarding a discharge to a shelter or another facility and assisting him with the transfer. (Testimony)
7. A transfer to a shelter is not viable due to the Appellant's use of an oversize wheelchair. (Testimony)
8. The Appellant needs assistance with his Activities of Daily Living ("ADL"). He needs assistance with bathing, transfers and toileting. (Exhibit 3: W-1020 Personal Care Assistance (PCA) Service Plan, Testimony)
9. The Appellant uses a prosthesis for his right leg. He needs assistance with attaching the prosthesis to his leg. The Appellant is learning to walk with it after having other prosthesis that did not properly fit. (Testimony)
10. Since ██████████ 2015 Money Follows the Person ("MFP") has been working with the Appellant to find housing. (Testimony)
11. The Appellant has not visited any housing in the community. (Testimony)

12. The Facility has no formal written discharge plan.
13. No written discharge plan has been presented to the Appellant.

### **CONCLUSION 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(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. On [REDACTED] 2016, the Facility issued a 30 day notice. The notice listed the effective date as [REDACTED] 2016 with a discharge to a shelter in the greater New Haven area.
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 [REDACTED] presented a verbal discharge plan. There is no written plan. There is no documentation from the Appellant's personal physician that the plan meets the welfare of the resident, evaluation of the effects of the transfer and actions taken to minimize such effects.
9. The Facility's action to discharge the Appellant is incorrect as the Facility's plan does not meet the statutory guidelines.

### **DISCUSSION**

The facility in this case, Arden House, has initiated proceedings to discharge the Appellant from its care. State 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. Therefore, since the Facility did not develop a discharge plan, the facility may not discharge the Appellant based on the 30 day notice sent to the Appellant 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] 2016, the Facility will submit to OLCRAH proof of compliance with this order.



**Miklos Mencseli**  
**Hearing Officer**

C: Desiree C. Pina, LTC Ombudsman Program  
Dan Lerman, LTC DSS Ombudsman  
[REDACTED] Administrator

### **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.