

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

2016
ature Confirmation

Client ID #
Request # 550

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On, [REDACTED] 2016, [REDACTED] and [REDACTED] (the "Facility") delivered a Notice of Intent to discharge [REDACTED] (the "Appellant") from care on [REDACTED] 2016 to the [REDACTED] ("homeless shelter") in Waterbury, Connecticut.

On [REDACTED] 2016, the Appellant requested an administrative hearing to contest the Facility's proposed action to discharge him from the Facility.

On [REDACTED] 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [REDACTED] 2016.

On [REDACTED] 2016, in accordance with sections 19a-535 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing at the Facility located at [REDACTED] Connecticut.

The following individuals were present at the hearing:

[REDACTED], Appellant
[REDACTED], Appellant's Spouse
Yvonne Broodie-Cristie, LMSW, Director of Social Services, [REDACTED]
[REDACTED]

Shalom Lerner, LNHA, Administrator, [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED]
Lisa Nyren, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Facility complied with the statutory requirements for an involuntary discharge of a patient when it proposed to discharge the Appellant to the homeless shelter.

FINDINGS OF FACT

1. The Appellant is married to [REDACTED] [REDACTED] ("Spouse"). (Spouse's Testimony)
2. The Appellant is fifty years old. (Appellant's Testimony)
3. The Appellant is disabled. (Appellant's Testimony)
4. The Appellant is a recipient of Medicaid. (Spouse Testimony)
5. On [REDACTED] 2010, the Appellant entered the Facility, a skilled nursing facility, from home. (Appellant's Testimony)
6. The Appellant's diagnoses includes: dysphagia, major depressive disorder, anxiety disorder, enlarged prostate, hypertension, and cerebrovascular disease. (Hearing Record)
7. Dysphagia is difficulty or discomfort in swallowing food. (Hearing Record)
8. The Appellant is incontinent. (Appellant's Testimony)
9. The Department of Social Services approved services for the Appellant under the Money Follows the Person ("MFP") program and is seeking appropriate community placement. (Social Worker Testimony)
10. The Appellant completes basic activities of daily living ("ADL") with some assistance with medication set up and dressing. (Appellant's Testimony)
11. The Appellant uses a wheelchair to ambulate. (Appellant's Testimony)
12. The Appellant smokes cigarettes. (Appellant's Testimony)

13. The Facility allows residents to smoke in a designated area monitored by the Facility staff at 9:00 am, 11:00 am, 1:00 pm, 4:00 pm, 7:00 pm, and 9:00 pm or during family visits in the designated area with Facility permission. (Testimony)
14. The Appellant violated the Facility's smoking policy on the following occasions by smoking in the Facility's parking lot unsupervised: [REDACTED] 2013, [REDACTED] 2014, [REDACTED] 2015, [REDACTED] 2015, [REDACTED] 2016, [REDACTED] 2016, and [REDACTED] 2016. (Exhibit 4: Progress Notes)
15. On [REDACTED] 2016, the Facility confiscated contraband, specifically 12 cigarettes and 2 lighters from the Appellant after a voluntary search of the Appellant and his room. (Exhibit 4: Progress Notes)
16. The Appellant understands the Facility's smoking policy and acknowledges he violated the Facility's smoking policy. (Appellant's Testimony)
17. On [REDACTED] 2016, the Facility issued the Appellant a Notice of Discharge signed by the Administrator. The notice states the reason for discharge is the safety or safety of individual in the nursing facility is endangered as documented by your personal physician in your medical record. The notice informed the Appellant of the Facility's intent to discharge him from the facility on [REDACTED] 2016 to the homeless shelter. (Exhibit A: Notice of Discharge)
18. The Spouse owns a condominium which is not appropriate for placement upon discharge from the Facility because the condominium has stairs and is not a safe placement for the Appellant. (Spouse's Testimony)
19. The Facility failed to issue a written discharge plan. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 19a-535(a) of the Connecticut General Statutes ("Conn. Gen. Stat.") provides for the purposes of this section: (1) "Facility" means an entity certified as a nursing facility under the Medicaid program or an entity certified as a skilled nursing facility under the Medicare program or with respect to facilities that do not participate in the Medicaid or Medicare programs, a chronic and convalescent nursing home or a rest home with nursing supervision as defined in section 19a-521; (2) "continuing care facility which guarantees life care for its residents" has the same meaning as provided in section 17b-354; (3) "transfer" means the movement of a resident from one facility to another facility or institution, including, but not limited to, a hospital emergency department, if the resident is admitted to

- the facility or institution or is under the care of the facility or institution for more than twenty-four hours; (4) “discharge” means the movement of a resident from a facility to a non-institutional setting; (5) “self-pay resident” means a resident who is not receiving state or municipal assistance to pay for the cost of care at a facility, but shall not include a resident who has filed an application with the Department of Social Services for Medicaid coverage for facility care but has not received an eligibility determination from the department such application, provided the resident has timely responded to requests by the department for information that is necessary to make such determination; and (6) “emergency” means a situation in which a failure to effect an immediate transfer or discharge of the resident that would endanger the health, safety or welfare of the resident or other residents.
2. State statute 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. In each case where the welfare, health or safety of the resident is concerned the documentation shall be by the resident’s physician. A facility which is part of a continuing care facility which guarantees life care for its residents may transfer or discharge (1) a self-pay resident who is a member of the continuing care community and who has intentionally transferred assets in a sum which will render the resident unable to pay the costs of facility care in accordance with the contract between the resident and the facility, or (2) a self-pay resident who is not a member of the continuing care community and who has intentionally transferred assets in a sum which will render the resident unable to pay the costs of a total of forty-two months of facility care from the date of initial admission to the facility. [Conn. Gen. Stat. § 19a-535(b)]
 3. The Appellant’s violation of the Facility’s rules endangered the health and safety of residents and staff at the Facility.
 4. State statute provides that 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 know, 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. [Conn. Gen. Stat. § 19a-535(c)(1)]

5. The Facility gave the Appellant at least 30 days' notice of the proposed discharge date.
6. State statute 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 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 or the resident's guardian or conservator, if any or legally liable relative or other responsible party, if known. [Conn. Gen. Stat. 19a-535(e)]

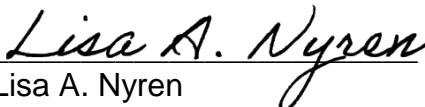
7. The Facility has not met the statutory requirement of formulating a discharge to include a written evaluation of the effects of the transfer or discharge on the resident, a statement of action taken to minimize such effects, and an outline of care and services which the resident would receive upon discharge.
8. The Facility's proposal to discharge the Appellant does not comply with state statute.

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.


Lisa A. Nyren
Fair Hearing Officer

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

Patricia Calderon, Connecticut State Long Term Care Ombudsman
Department of Social Services
249 Thomaston Ave.
Waterbury, CT 06702

[REDACTED]
[REDACTED]
[REDACTED]
[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 Ave., 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 Ave., 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.