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

[redacted] 2016
SIGNATURE CONFIRMATION

REQUEST #790551

CLIENT ID #[redacted]

NOTICE OF DECISION

PARTIES

[redacted]

[redacted]

PROCEDURAL BACKGROUND

On [redacted] 2016, the [redacted] **Facility** (the "Facility") issued a Notice of Discharge to [redacted] (the "Appellant") stating its intent to involuntarily discharge the Appellant on [redacted] 2016, for nonpayment as the Appellant's billing account for the Facility had a financial arrears.

On [redacted] 2016, the Appellant requested an administrative hearing to contest the Facility's Notice of Intent to involuntarily discharge him for nonpayment.

On [redacted] 2016, the Office of Legal Counsel, Regulations, and Administrative ("OLCRAH") issued a Notice of Administrative Hearing scheduling a hearing at the Facility for [redacted] 2016, @ 10:00 AM.

On [redacted] 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 involuntarily discharge the Appellant for nonpayment.

The following individuals were present at the hearing:

[redacted], Appellant
[redacted], Appellant's Spouse/Witness
Jamie Irizarry, RN, Nurse for the Facility
Gertrude Srugis, Social Worker for the Facility
Jennifer Mahler, Asst. Social Worker for the Facility
Samantha Gallagher, Facility's Business Office
Hernold C. Linton, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Facility's decision to discharge the Appellant due to nonpayment is correct, and complies with the statutory requirements.

FINDINGS OF FACT

1. On [redacted] 2016, the Appellant was admitted to [redacted] Facility for short-term rehabilitative care due to having a urinary tract infection, Bipolar disorder, and breathing obstruction. (Hearing Record)

2. The Appellant received Medicare coverage as a third party payment source to pay for the initial cost of his stay. (Hearing Record)

3. The Appellant's Medicare coverage for long term care ("LTC") ended on [redacted] 2016. (Hearing Record)

4. Before being admitted to the Facility, the Appellant and his spouse resided independently in the community in a basement apartment rented from his sister-in-law. (Discharge Plan)

5. The Appellant does not want to return to his former place of residence. (Appellant's testimony)

6. The Appellant would like to be discharged to an assisted living facility located in [redacted], CT. (Appellant's testimony)

7. On [redacted] 2016, the Appellant applied for Medicaid coverage to pay for his nursing care at the Facility. (Hearing Record)

8. The Facility is assisting the Appellant in obtaining and responding to requests for additional information necessary to complete an eligibility determination on his application for Medicaid coverage. (Hearing Record)

9. The Appellant owes the Facility $7,411.00 for providing room and board for the period of [redacted] 2016 through [redacted] 2016. (Resident's Statement)

10. On [redacted] 2016, the Facility gave the Appellant a Notice of Discharge stating that he would be discharged on [redacted] 2016 to the local shelter for the homeless, located at [redacted] CT due to the financial arrears of his billing account with the Facility. ([redacted]/16 Notice of Discharge)

11. The Appellant is seventy-six (76) years of age (DOB [redacted]/39). (Appellant's testimony)

12. The Appellant ambulates with the assistance of a walker. (Appellant's testimony)

13. The Appellant is assisted by his spouse, who is also his advocate. (Hearing Record)

14. The Facility made a referral to the Area on Aging (a Community Action Agency) to assist the Appellant with his housing needs upon his discharge from the Facility. (Discharge Plan)

15. The Facility made a referral to the Area on Aging to provide the Appellant with elder care services in the community upon his discharge. (Discharge Plan)

16. The Facility considered the feasibility and acceptance of the Appellant's proposed placement. (Discharge Plan)

17. The Facility will schedule follow up meetings/telephone conferences with the Appellant and family members when he is discharged. (Discharge Plan)

18. The Appellant's application for Medicaid coverage as a payment source was still pending as of the day of this hearing. (Hearing Record)

CONCLUSIONS OF LAW

1. 42 § CFR 483.12 Admission, transfer and discharge rights

   (a) Transfer and discharge (1) Definition: Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility. (2) Transfer and discharge requirements. The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless-

   (v) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid.

2. Section 19a-535(h)(1) of the Connecticut General Statutes (Conn. Gen. Stat.) authorizes the Commissioner of Social Services to hold a hearing to determine whether the transfer or discharge is being affected in accordance with this section.

3. Conn. Gen. Stats. §19a-535(a) provides that 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 on such application, provided the resident has timely responded to requests by the department for information that is necessary to make such determination;

4. The Appellant is not considered a self-pay resident based his pending application for Medicaid coverage as a third party payment source, and has been responding to the Department's requests for additional information necessary to make an eligibility determination on his application for Medicaid coverage.

5. Conn. Gen. Stats. §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. 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.

6. The Appellant's nonpayment and arrearages owed to the Facility of $7,411.00 for the period of [redacted] 2016 through [redacted] 2016 exceed 15 days of the per diem facility room rate.

7. The Facility requested payment from the Appellant in a timely manner. However, because the Appellant has a pending application for Medicaid coverage as a third party payment source, the Facility proposed discharge of the Appellant for nonpayment is not permissible under the statute.

8. Conn. Gen. Stats. §19a-535(c)(1) 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 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.

9. The Facility gave the Appellant and his representative prior notice, in writing, of the effective date of the proposed discharge, and the location to which the resident is to be transferred.

10. The Facility's discharge notice provided the Appellant with an effective date of the proposed discharge, the right to appeal the proposed discharge and to be represented by legal counsel, and was given to the Appellant and his representative thirty days prior to the effective date of the proposed discharge.

11. Conn. Gen. Stats. §19a-535(d) provides that no resident shall be transferred or discharged from any facility as a result of a change in the resident's status from self-pay or Medicare to Medicaid provided the facility offers services to both categories of residents.

12. Conn. Gen. Stats. §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.

13. The discharge plan does have the signature of the medical director in conjunction with the signatures of the nursing director, social worker, and administrator, and is in compliance with the statutory guidelines.

14. Conn. Gen. Stats. §19a-535(e) provides that 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.

15. The Facility's discharge plan provides measures taken to minimize the effect of an

involuntary transfer, the care and services that the Appellant would require upon discharge, and discusses all relevant factors that would affect the Appellant's adjustment to the transfer.

16. The Facility's action to transfer/discharge the Appellant for nonpayment is incorrect as the Appellant has a pending application for Medicaid coverage as a third party payment source.

DECISION

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

ORDER

The Facility shall not discharge the Appellant for nonpayment while he has a pending application for Medicaid coverage as a third party payment source.

Hernold C. Linton

Hernold C. Linton
Hearing Officer

Cc: **Colette Johnson,** Administrator,
Meridian Manor Skilled Nursing Facility, 1132 Meriden Road, Waterbury, CT 06705

Desiree C. 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 Administrative Hearings and Appeals, 55 Farmington Avenue, Hartford, CT 06105-3725.

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.