

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 #795660

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 Trinity Hill Care Center

The following individuals were present at the hearing:

██████████ Appellant

██

██

Swati Sehgal, Hearing Officer

The hearing record was held open for the submission of additional evidence. On ██████████ 2016, the 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 discharge, involuntarily, the Appellant from the facility due to not requiring the skilled nursing services provided by the facility.

**FINDING OF FACTS**

1. The Appellant is a 46 year old individual (D.O.B. ██████/1960). (Ex. 2: Patient Referral Report dated ██████/16)
2. On ██████ 2016 the Appellant entered the Facility for rehabilitation. (Ex. 4: Nursing Home to Hospital Transfer Form)
3. At the time of her admission the Appellant's primary diagnosis were pneumonia and respiratory failure. (Exhibit 4)
4. The Appellant's most recent Level of Care approval through Ascend set to expire on ██████ 2016. (Facility's Testimony)
5. The Appellant attends ██████ program of ██████ at the Facility. (Exhibit A: letter from Wexford Behavioral Health, Inc.)
6. The Appellant has been diagnosed with severe Depression and group therapy thru ██████ helps with those issues. (Appellant's Testimony, Facility 's Testimony)
7. The Appellant is not able to handle her paperwork without staff assistance. (Appellant's testimony)
8. The Appellant does not require assistance with any of her Activities of Daily Living ("ADLs"). (Facility's testimony)
9. The Appellant uses a wheel chair for mobility, not able to use walker for longer period of time. (Appellant's Testimony)

10. On [REDACTED] 2016, the Facility issued a 30 Day Involuntary Transfer/Discharge Notice/discharge plan to the Appellant stating its intent to involuntarily discharge the Appellant to a local homeless shelter on or following 30 days from the date of its notice as the resident no longer needs the services of the facility due to continued independence. (Ex. 1: Notice of Discharge dated [REDACTED]/16 and Facility's Testimony)
11. The Discharge Plan noted the Facility's social worker can provide assistance to the Appellant with referrals to obtain community based services. The Discharge Plan indicated that the Facility has provided a list of community resources from INFOLINE to the Appellant. (Exhibit 1: Discharge Plan)
12. The Facility's plan is to help the Appellant to contact INFOLINE to find a homeless shelter for women and schedule home physical therapy and nursing care for her in shelter.(Facility's Testimony)
13. The Appellant's physician assessment is that the Appellant is ready and capable to be living in the community. (Facility's Testimony and Ex. 1)
14. The Appellant's mental health symptoms will get worse if discharged to the community. ( Facility's Testimony)
15. The Facility is applying for another Level of Care approval through Ascend based on the Appellant's mental health condition. (Facility's Testimony)
16. The Appellant applied for services under the Money Follows the Person Program ("MFP"). (Facility's Testimony)
17. The Appellant is on Mental Health Waiver Program and will receive services through that waiver program once leave the Facility including housing services.(Facility's Testimony)

### **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(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 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 may represent himself 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 numbers 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 gave the Appellant at least 30 day notice of the proposed discharge date.
7. Conn. Gen. Stat. § 19a-535 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 affects 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 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 provided the Appellant with Involuntary Discharge Notice/ Discharge Plan, in accordance with state statutes and regulations.

### **DISCUSSION**

The Facility has proposed to involuntarily discharge the Appellant from its care because the Appellant's medical condition has improved significantly and she no longer requires the level of care provided by a skilled nursing facility. The Appellant has been diagnosed with severe depression and anxiety. The Appellant testified that she is in group therapy three days a week for her mental health, narcotic recovery and alcohol support, needs a wheelchair for mobility. Although discharged from physical therapy, the Appellant feels she requires more physical therapy sessions.

The Facility acknowledges the severity of her mental health condition and agrees that her discharge to homeless shelter will worsen her mental health symptoms; however her mental health condition does not require the level of care provided by a skilled nursing home.

The Appellant is on Mental Health Waiver Program, and will receive services including housing services under that program even after her discharge from the Facility.

**DECISION**

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

*Swati Sehgal*  
**Swati Sehgal**  
**Hearing Officer**

Cc: Daniel Albert, Director of Social Services,  
Trinity Hill Care Center, 151 Hillside Ave, Hartford CT06106  
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.