

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

██████████ 2017
SIGNATURE CONFIRMATION

HEARING ID#: 802353

NOTICE OF DECISION

PARTY

██████████
████████████████████
██████████
████████████████████

Jaime Faucher, Administrator
Touchpoints at Bloomfield
140 Park Avenue
Bloomfield, CT 06002

PROCEDURAL BACKGROUND

On ██████████ 2016, Touchpoints at Bloomfield (the “Facility” or “Touchpoints”) issued a Notice to ██████████ (the “Appellant”) of its intent to involuntarily discharge her on, or after thirty days following the date of the notice, for the reasons that the facility can no longer meet her needs; and her actions have placed the safety of others in the facility at risk.

On ██████████ 2016, the Appellant requested an administrative hearing to contest her proposed discharge from the Facility.

On ██████████ 2016, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████ 2016.

On ██████████ 2017, at the request of the Facility, OLCRAH issued a notice rescheduling the hearing for ██████████ 2017.

On ██████████ 2017, at the request of the Facility, OLCRAH issued a notice rescheduling the hearing for ██████████ 2017.

On ██████████ 2017, in accordance with sections 19a-535, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an

administrative hearing at the Facility. The following individuals were present at the hearing:

██████████, Appellant
Jaime Faucher, Administrator, Touchpoints at Bloomfield
Nancy Kurland, Social Services, Touchpoints at Bloomfield
James Hinckley, Hearing Officer

The hearing record was held open for additional information to be provided by the Facility, and for time for the Appellant to comment on the additional information. On ██████████ 2017, the hearing 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 involuntarily discharge the Appellant from the Facility.

FINDINGS OF FACT

1. The Appellant is 54 years old and is a Medicaid recipient. (Appellant's testimony, Facility Representative's testimony)
2. The Appellant currently resides at Touchpoints, a long term care facility that provides skilled nursing care. (Hearing Record)
3. The Appellant is not conserved and does not have any authorized representative or other responsible party who acts on her behalf. (Appellant's testimony, Facility Representative's testimony)
4. The Appellant does not have a personal physician. (Appellant's testimony, Facility Representative's testimony)
5. Touchpoints grants to certain qualifying residents, permission, within specified rules, to independently leave and return to the facility grounds, and the authorized permissions are known as independent leaves of absence ("I-LOA"). (Mr. Faucher's testimony)
6. The I-LOA program has a substantial number of guidelines and requirements; eligibility is based in part on the resident's medical condition, appropriate safety awareness and judgment, and other factors. I-LOA status is specified in physician's orders, is subject to weekly review, and can be changed or revoked at any time based on environmental safety factors (darkness, inclement weather), or any change in the resident's condition or behavior that would affect their safety or suitability to be granted independent leave. Mr. Faucher's testimony, Ex. 4:

Resident Independent LOA Individualized Assessment Guidelines and Checklist)

7. The Appellant has, on several occasions, violated the agreed upon conditions of her approved I-LOA, such as by returning to the Facility after dark. (Nancy Kurland's testimony)
8. While on I-LOA, the Appellant has been observed riding her motorized wheelchair in the roadway, rather than on the sidewalk, and admits that she has done so, blaming the poor condition of the local sidewalks. (Mr. Faucher's testimony, Appellant's testimony)
9. After having her I-LOA privileges revoked, the Appellant, on numerous occasions, left the Facility without authorization, telling staff that she refused to follow facility rules. (Ex. 9: Departmental Notes)
10. On [REDACTED] 2016, the Appellant was noted to be missing from the Facility, prompting a facility-wide search to ascertain her whereabouts ("Dr. Hunt" was called), and it was later determined that the Appellant had left the facility without authorization so that she could attend a block party. (Ex. 9, Mr. Faucher's testimony)
11. On [REDACTED] 2016, the Appellant was observed to be drinking alcohol outside on the grounds of the Facility, and was in possession of an empty "nip" sized bottle of alcohol, which is against the facility's contraband policy and a safety risk. (Ex. 7: Nurse Progress Notes, Ex. 5: Notification of Contraband, Ms. Kurland's testimony, Appellant's testimony)
12. On [REDACTED] 2016, a lighter was found on the Appellant's bed, which the Appellant denied belonged to her. The Appellant has a roommate who is unsafe to be in possession of a lighter. (Ex. 9, Ms. Kurland's testimony, Appellant's testimony)
13. On [REDACTED] 2016, the Appellant purchased a soda while off the grounds, and gave it to another resident, which is against the Facility's rules because food and drinks cannot be given to residents without staff checking dietary restrictions (diabetic restrictions, etc.). (Ex. 9, Ms. Kurland's testimony)
14. On [REDACTED] 2016, Touchpoints issued to the Appellant a *Notice of Intent to Discharge/Discharge Plan*. (Ex. 1: Notice of Intent to Discharge/Discharge Plan)
15. The *Notice of Intent to Discharge* proposed to discharge the Appellant on, or after, 30 days from the date of the notice to either *Westside Care*

Center or Chelsea Place Care Center, the reasons given for the proposed discharge were: The discharge is necessary for your welfare as the facility can no longer meet your needs, and Your actions have placed the health or safety of individuals in the facility at risk of danger. (Ex. 1)

16. The *Notice of Intent to Discharge* included a discharge plan that was signed by the Administrator of the Facility, the Medical Director of the Facility, the Director of Nursing for the Facility and the Director of Social Services for the Facility. (Ex. 1, Testimony)
17. The Appellant was consulted in the preparation of the discharge plan, and the proposed discharge locations were chosen, in part, due to their location and proximity to the Appellant's friends and family. (Mr. Faucher's testimony, Appellant's testimony)
18. The proposed discharge locations are both skilled nursing facilities, like Touchpoints, which are able to address the Appellant's medical, psychological and social needs, and supervise or assist with the Appellant's activities of daily living, management or coordination of resources to meet her healthcare needs, assistance with medications, provision of meals, residency, recreational activities and social services. (Ex. 1, Testimony)
19. On [REDACTED] 2016, Touchpoints amended the *Notice of Intent to Discharge* so that *Chelsea Place Care Center* was replaced by *Trinity Hill Health Center*, and the Appellant initialed the amendment to indicate that she had been made aware of the proposed change; *Trinity Hill Health Center* is also a skilled nursing facility. (Ex. 2: Amendment to Discharge Notice, Mr. Faucher's testimony, Appellant's testimony)
20. Justification for why *Trinity Hill Health Center* would make a more suitable placement for the Appellant, given her past safety violations, include: Touchpoints has numerous means of egress by which (the Appellant) can willfully exit and re-enter without notification or supervision. If *Trinity Hill Health Center* is considered an option for transfer, the facility's exits and entrances are continuously either supervised or video monitored to further ensure safety of the resident care environment. Its main entrance vestibule is secured within, therefore access to resident care areas can be further monitored and surveilled to ensure safety. In addition the facility employs safety officers not otherwise required of a nursing facility to further promote safety and security of facility residents. (Ex. 10: email from Robert Burke, Vice President of Psychosocial Services for both facilities)

21. The Appellant has exhibited poor judgment and poor safety awareness, and has chronically engaged in activities that put her safety and the safety of other residents of the Facility at risk. (Hearing Record)
22. The Appellant expresses that she feels that the Facility's rules are arbitrary and not important to follow, and has stated to Facility staff on numerous occasions that she is unwilling to follow their rules, and will follow her own rules. (Appellant's testimony, Ex. 7)
23. *Trinity Hill Health Center* would be equally well suited as Touchpoints to provide for all of the Appellant's needs, but would be better suited than Touchpoints to provide for the safety of the Appellant and other facility residents, because of different safety measures in place at *Trinity Hill*, as well as differences in the physical layout of each facility. (Facts #18 to #20)
24. There is no evidence in the hearing record that *Westside Care Center* would be better suited than Touchpoints to deal with the safety issues presented by the Appellant, or provide her with a safer environment. (Hearing Record)
25. The Appellant would prefer to remain a resident of Touchpoints, but would be willing to transfer to *Trinity Hill Health Center*. (Appellant's testimony)

CONCLUSIONS OF LAW

1. Section 19a-535 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 being effected in accordance with this section.
2. Conn. Gen. Stat. §19a-535(a)(4) provides that the term "discharge" means the discharge of a resident from a facility to another institution or a non-institutional setting.
3. Conn. Gen. Stat. §19a-535 (b) provides in part: A facility shall not transfer or discharge a patient from the facility except to meet the welfare of the patient which cannot be met in the facility, or unless the patient no longer needs the services of the facility due to improved health, or the health or safety of individuals in the facility is endangered, or in the case of a self-pay patient, for his 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 patient's medical record by a physician.

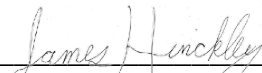
4. Touchpoints has documented in the Appellant's medical records that the Appellant's behaviors present a safety risk to herself and to other residents of the facility, and has established that the Facility cannot meet the welfare of the Appellant.
5. In documenting the basis for the discharge in the Appellant's medical record, the facility complied with the requirement in section 19a-535(b) of the Connecticut General Statutes.
6. Conn. Gen. Stat. §19a-535 (c) provides in part: Before effecting a transfer or discharge of a patient from the facility, the facility shall notify, in writing, the patient and the patient'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 patient 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 stay the proposed transfer or discharge, which date shall be ten days from the receipt of the notice from the facility, that the patient may represent himself or herself or be represented by legal counsel, a relative, a friend or other spokesman, and information as to bed hold and hospital readmission policy when appropriate. The notice shall also include the name, mailing address and telephone number of the State Long-Term Care Ombudsman.
7. The facility properly issued a notice of discharge to the Appellant pursuant to the requirements of 19a-535(c) of the Connecticut General Statutes.
8. The Appellant does not have a guardian or conservator or other responsible party who was required to be noticed pursuant to the requirements of 19a-535(c) of the Connecticut General Statutes.
9. Conn. Gen. Stat. §19a-535 (e) provides in part: Except (1) in an emergency, (2) in the case of transfer to a hospital, or (3) in the case of transfer into or out of a Medicare distinct part within the same institution, no patient shall be transferred or discharged from a facility unless a discharge plan has been developed by a personal physician of the patient or the medical director in conjunction with the nursing director, social worker or other health care provider. The plan shall contain a written evaluation of the effects of the transfer or discharge on the patient 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 and the resident's guardian or conservator, if any, or legally liable relative or other responsible party, if known.

10. The Facility's medical director properly developed a discharge plan in conjunction with the nursing director and social worker that outlined the care and services that the Appellant would receive upon transfer, and addressed the effects of the transfer on the Appellant; the Appellant does not have a personal physician who was required to be involved in the development of the discharge plan pursuant to the requirements of 19a-535 (e) of the Connecticut General Statutes.
11. The Facility correctly provided the Appellant, and all required individuals, at least 30 days prior notice, in writing, of the effective date of the proposed discharge, the location to which the resident is to be transferred, an outline of the care and kinds of services the resident will receive upon discharge, and the right to appeal the proposed discharge.
12. The Facility's proposal to discharge the Appellant complies with state statutes.
13. The Facility has only established that one of the proposed transfer locations, *Trinity Hill Health Center*, could better meet the welfare of the Appellant. The Facility is only authorized to transfer the Appellant to *Trinity Hill Health Center*.
14. Conn. Gen. Stat. §19a-535(h)(5) provides that: Except in the case of a transfer or discharge effected pursuant to subdivision (4) of this subsection, (A) an involuntary transfer or discharge shall be stayed pending a decision by the commissioner or the commissioner's designee, and (B) if the commissioner or the commissioner's designee determines the transfer or discharge is being effected in accordance with this section, the facility may not transfer or discharge the resident prior to fifteen days from the date of receipt of the decision by the resident and the resident's guardian or conservator, if any, or the resident's legally liable relative or other responsible party if known.
15. Touchpoints may discharge the Appellant to *Trinity Hill Health Center* no sooner than fifteen days from the date the Appellant receives this decision.

DECISION

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


James Hinckley
Hearing Officer

cc: Barbara Cass, Connecticut Dept. of Public Health
Desiree C. Pina, LTC Ombudsman

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 06105-3725. 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.