

STATE OF CONNECTICUT
DEPARTMENT OF SOCIAL SERVICES
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS
55 FARMINGTON AVENUE
HARTFORD, CT 06106-5033

██████████ 2017
Signature Confirmation Mail

Client ID # ██████████
Request # 816501

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On ██████████ 2017, the Vanderman Place, a skilled nursing facility, sent ██████████
██████████ (the Appellant”) a Notice of Intent of Immediate Transfer and Discharge.

On ██████████ 2017, the Appellant requested an administrative hearing to contest
the decision to discharge him from the facility.

On ██████████ 2017 the Office of Legal Counsel, Regulations, and Administrative
Hearings (“OLCRAH”) issued a Notice scheduling the administrative 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.

The following individuals were present at the hearing:

██████████ Appellant
Atty. ██████████ Ct. Legal Services, Appellant’s Attorney
Ginny Person, Administrator, Vanderman Place
Ryann Hayward, Director of Nursing, Vanderman Place
June Mineau, Social Worker, Vanderman Place
Almelinda, McLeod, Fair Hearing Officer

The record was held open for additional submissions of documents. On ██████████
2017, the record closed.

STATEMENT OF THE ISSUE

The issue to be decided is whether Vanderman Place acted correctly when it proposed to involuntarily discharge the Appellant from its facility according to state statutes.

FINDINGS OF FACT

1. On ██████████ 2016, the Appellant was admitted into Vanderman Place for short term rehabilitation. (Exhibit 10, Progress Notes, Facility's testimony)
2. The Appellant has a medical history of traumatic hemothorax, rib fracture, idiopathic neuropathy, alcohol abuse, type 2 diabetes, hypertension and hyperlipidemia and chronic shoulder pain. (Exhibit 10- Progress Notes)
3. The Appellant was homeless prior to his admission to the Vanderman Place. (Appellant's testimony)
4. The Appellant admits that he has been non-compliant with some of the facility rules during his stay at Vanderman Place. (Appellant's testimony)
5. Vanderman Place has a smoking policy which states that residents are not to have smoking paraphernalia upon their person, they are to be turned in the supervisor to hold in a double locked room in a controlled environment. (Facility's testimony and Exhibit 3, smoking agreement document)
6. On ██████████ 2016, the Appellant signed a smoking agreement for supervised smoker with the facility staff member. (Exhibit 3)
7. On ██████████ 2017, the Appellant signed a smoking agreement for supervised smoker with the facility staff member. (Exhibit 3)
8. On ██████████ 2017, there was an incident where staff smelled cigarette smoke in one of the guest bathrooms located in wing 2 of the facility. (Exhibit 6, Non-compliance plan of care and Exhibit 7, Reportable Event form)
9. The guest bathroom in wing 2 was located next door to the oxygen room. (Facility testimony)
10. On ██████████ 2017 the Appellant was seen walking in the general vicinity of the bathroom where smoking paraphernalia was discovered in the waste basket. (Exhibit 7, Reportable Event form)

11. On ██████████ 2017, Vanderman Place staff approached the Appellant and smelled cigarettes on his person. (Facility testimony)
12. On ██████████ 2017, a room search was conducted on the Appellant and all the other smokers. The Appellant was the only resident that was found to have had contraband in his room and on his person. The staff found 2 boxes of cigarettes, 1 open and one sealed, lighter, e-cigarettes and nicotine liquid refill, matches, a pocket knife, Lidoderm patches and un-prescribed medications. (Facility testimony, Exhibits, 6, 7)
13. On ██████████ 2017, the staff at Vanderman Place determined that this action was in violation of the rules of the facility and endangered the health and safety of the residents. The staff at Vanderman Place concluded the Appellant had to be removed from the premises immediately. (Hearing record)
14. On ██████████ 2017, the facility doctor, Dr. Fenton was notified and the recommended action was to have the Appellant transferred to the emergency department for “evaluation, safety of self and others”. (Exhibit 14, Physician’s Interim Orders).
15. On ██████████ 2017, the Appellant was awoken by police and transported by EMT’s to Windham hospital for an emergency discharge by ambulance. The Appellant was verbally told that he was subject to emergency discharge because he put the health and safety of the residents in jeopardy. (Facility and Appellant testimony)
16. On ██████████ 2017, the facility gave the involuntary discharge notice to the EMT to provide to the hospital as facility protocol. (Facility testimony)
17. On ██████████ 2017, the Appellant did not get notification of the involuntary discharge notice issued and given to the EMT’s. (Appellant testimony)
18. Because the Appellant did not get a discharge notice, he was deprived of his appeal rights; the procedure for initiating the appeal, the contact information of the Long term care Ombudsman and his right to represent himself or be represented by legal counsel. (Hearing record)
19. On ██████████ 2017, the hospital released the Appellant because his health was good otherwise and he did not require a stay. (Exhibit F and G, Windham Hospital Medical Record)
20. On ██████████ 2017, the Appellant returned to the facility to collect his belongings. The Appellant was turned away because he should not be on

the premises and he would need to make an appointment for the facility to help him with his belongings. (Appellant and Facility testimony)

21. On ██████████ 2017, the Appellant's counsel received the discharge notice that the facility gave to the EMT. (Appellants brief, testimony and Exhibit 10, Progress Notes)
22. The Appellant admits that contraband was found in his room and in his coat pocket on ██████████ 2017; but is not guilty of smoking in the guest bathroom inside the facility. (Appellant testimony and Exhibit 10, Progress Notes)
23. The Appellant is not interested in returning to Vanderman Place but would like to clear his name. (Appellant's testimony)
24. Counsel for the Appellant contends that the action to involuntarily discharge the Appellant was unlawful because the incident did not meet the definition of an emergency and the Appellant was not given a notice of the emergency discharge.

CONCLUSIONS OF LAW

1. Section 19a-535 (h) (1) of the Connecticut Statutes (Conn. Gen. Stat.) authorizes the Commissioner of the Department of Social Services to hold a hearing to determine whether the transfer of 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 (a) (6) provides "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.
4. Conn. Gen. Stat. 19a-535 (b) provides a facility is required to transfer/ discharge a patient when the health or the safety of individuals in the facility are endangered. The basis for the transfer / discharge shall be documented in the patient's medical record by a physician.
5. The facility correctly determined the health and safety of the residents were endangered and correctly documented the reason why the Appellant was discharged from the facility.

6. 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 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 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 days prior to the residents proposed transfer or discharge, except where the health or safety of individuals in the facility for thirty days, in which cases notice shall be given as many days before the transfer or discharge as practicable.
7. Conn. Gen. Stat. 19a-535 (h) (4) provides in an emergency the notice pursuant to subsection (c) of this section shall be provided as soon as practicable. A resident who is transferred or discharged on an emergency basis or a resident who receives notice of such a transfer or discharge may contest the action by requesting a hearing in writing not later than twenty days after the date of receipt of notice or not later than twenty days after the date of transfer or discharge, whichever is later, unless the resident demonstrates good cause for failing to request a hearing within the twenty- day period.
8. The facility was incorrect when it involuntarily discharged the Appellant because they never gave the discharge notice to the Appellant. The discharge notice was given to the EMT's on ██████████ 2017 as facility protocol, however the discharge notice was never given to the Appellant as soon as it was practicable.

DECISION

The Appellant's appeal is GRANTED.

ORDER

1. The Facility is ordered to rescind its proposal of involuntarily discharging the Appellant from its care.
2. No later than [REDACTED] 2017, the Facility will submit to the undersigned proof of compliance with this order.



Almelinda McLeod
Hearing Officer

CC: Barbara Cass, Section Chief, Facility Licensing and Investigations Section,
CT. Department of Public Health, 410 Capitol Avenue, Hartford, CT. 06134

Attorney [REDACTED]
[REDACTED]

Ginny Person, Administrator of Vanderman Place
595 Valley Street, Willimantic, CT. 06226

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, 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 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.