

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

██████████ 2017
Signature confirmation

Client: ██████████
Request: 818472

NOTICE OF DECISION

PARTIES

██████████
██
██
██

Bernadette Stevenson, Administrator
Laurel Ridge Health Care Center
642 Danbury Road
Ridgefield, CT 06877

PROCEDURAL BACKGROUND

On ██████████ 2017, the Laurel Ridge Health Care Center (the "Facility"), a skilled nursing facility, issued ██████████ (the "Appellant") a *Notice of Discharge* stating that the Facility would be involuntarily discharging the Appellant 30 days from the date of receipt of the notice.

On ██████████ 2017, the Appellant faxed a request for an administrative hearing with the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") to contest the Facility's proposal.

On ██████████ 2017, the OLCRAH issued a notice to the Parties scheduling an administrative hearing for ██████████ 2017.

On ██████████ 2017, in accordance with sections 19a-535 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, the OLCRAH held an administrative hearing at the Facility. The following individuals attended the hearing:

██████████ Appellant
Bernadette Stevenson, Facility's administrator

Edward Berman, M.D., Facility's medical director
Judy Hyland, M.S.W., LCSW, Facility's director of social work
Rita Wagener, B.S.W., Facility's witness
Lauren Krieger, M.S. (OTR/L), Facility's witness
Gina Mucherino, L.P.N., Facility's witness
Eva Tar, Hearing Officer

The administrative hearing record closed on [REDACTED] 2017.

STATEMENT OF ISSUE

The issue is whether the Facility complied with the statutory requirements for an involuntary discharge of the Appellant to a non-institutional setting.

FINDINGS OF FACT

1. The Appellant's date of birth is [REDACTED] 1960. (Appellant's testimony)(Facility's Exhibit 2)(Facility's Exhibit 4)
2. The Appellant is not a conserved individual. (Appellant's testimony)
3. On or around [REDACTED] 2016, Norwalk Hospital admitted the Appellant as a patient. (Appellant's testimony)
4. Prior to his admittance to Norwalk Hospital, the Appellant had been residing at a hotel. (Appellant's testimony)
5. The Appellant was admitted to Norwalk Hospital for treatment of the following: weakness and diarrhea with abnormal weight loss. (Facility's Exhibit 2)
6. On [REDACTED] 2016, Norwalk Hospital discharged the Appellant to the Facility for rehabilitation. (Facility's Exhibit 2)
7. The Facility is a skilled nursing facility. (Hearing record)
8. The Appellant has a medical history of the following: abnormal weight loss; diarrhea; Human Immunodeficiency Virus [HIV] disease; nausea; pain in right thigh; syncope (fainting); vomiting; chronic pain syndrome; difficulty in walking; muscle weakness; opioid use; pain in shoulder; unsteadiness on feet. (Facility's Exhibit 4)
9. The Appellant last fainted six weeks prior to the date of the hearing. (Appellant's testimony)
10. The Appellant has difficulty lifting his arms above his shoulders and has little strength in his arms. (Appellant's testimony)

11. The Appellant is able to smoothly gesture with his hands while speaking and rub his face and neck.
12. The Appellant is independent in the following basic activities of daily living: eating, bathing, toileting, transferring, and continence. (Facility's Exhibit 1)
13. The Appellant uses a rollator—a wheeled walker with a seat—to get around. (Appellant's testimony)
14. The Appellant needs help getting ready for a shower and rinsing his hair, because those tasks require lifting his arms above his shoulders. (Appellant's testimony)
15. The Appellant needs help with his shoes. (Appellant's testimony)
16. With the exception of his nicotine patch, the Appellant's medications are taken orally; they are not administered by injection or by IV. (Mucherino's testimony)(Facility's Exhibit 4)
17. The Appellant is independent in taking his medications; the Facility staff set out the dosages and he takes them. (Appellant's testimony)(Mucherino testimony)
18. In order for Medicaid to continue to pay for the Appellant's stay in a skilled nursing facility, a physician must certify that the Appellant continues to require skilled nursing services. (Hyland's testimony)
19. Typical reasons for requiring skilled nursing services in an institutional setting include: unstable vital signs, hypoxia/deprivation of oxygen, and open wounds management. (Berman's testimony)
20. On ██████████ 2017, the Facility's medical director examined the Appellant and reviewed the Appellant's medical information, finding that there were no active medical problems to be managed. (Berman's testimony)
21. The Facility's medical director declined to certify the Appellant as continuing to require skilled nursing level of services. (Berman's testimony)(Facility's Exhibit 6)
22. The Appellant has not worked since 1997. (Appellant's testimony)
23. The Appellant currently has no income. (Appellant's testimony)
24. The Facility has encouraged the Appellant to apply for and complete the Social Security application process. (Wagener's testimony)(Hyland's testimony)(Facility's Exhibit 5)
25. Only the Appellant may apply on his own behalf for Social Security benefits; he does not have a conservator. (Wagener's testimony)(Appellant's testimony)

26. The Appellant has applied for Social Security benefits several times a few years ago, but failed to complete the process. (Appellant's testimony)
27. The Appellant applied for Social Security benefits a month prior to the hearing. (Appellant's testimony)
28. In anticipation of his discharge from the Facility, Facility social work staff and nursing staff met with the Appellant on the following dates to discuss his return to the community: [REDACTED] 2017; [REDACTED] 2017; [REDACTED] 2017; and [REDACTED] 2017. (Facility's Exhibit 3)(Facility's Exhibit 5)
29. Facility social work staff has attempted to find the Appellant placement in supervised housing, but the twenty-five facilities contacted by staff declined to take the Appellant. The reasons included: no available male beds; he is too young, he is a bad fit, he is not a mentally challenged individual; he does not receive SSI [Supplemental Security Income] or Social Security disability, he would have to pay rent, or he would have to find a job. (Wagener's testimony)(Facility's Exhibit 5)
30. The Facility anticipates removing the Appellant to a homeless shelter, if the Facility cannot find housing that would be paid for by the Medicaid program. (Stevenson's testimony)
31. On [REDACTED] 2017, the Facility issued a *Notice of Discharge* stating that the Facility would be involuntarily discharging the Appellant 30 days from the date of receipt of the notice. (Facility's Exhibit 1)
32. On [REDACTED] 2017, the Facility completed the Appellant's discharge plan and an addendum to the discharge plan. (Facility's Exhibit 2)(Facility's Exhibit 3)
33. The Facility's [REDACTED] 2017 discharge plan addresses the Appellant's activities of daily living; equipment; medication; diet; physical therapy; occupational therapy; therapeutic recreation; social services; and notification to his primary physician. (Facility's Exhibit 2)
34. The Facility's [REDACTED] 2017 discharge plan is signed by the Facility's administrator, medical director, and director of nursing services; subsections are signed by staff overseeing specific services (i.e. diet, occupational therapy, and physical therapy). (Facility's Exhibit 2)
35. After the [REDACTED] 2017 delivery of the *Notice of Discharge* and the discharge plan to the Appellant, the Facility continued to meet with the Appellant to discuss his placement in the community. (Facility's Exhibit 5)
36. The Appellant is uncooperative with Facility staff regarding his discharge planning. (Facility's Exhibit 5)

37. The Appellant's medical conditions do not prohibit him from residing in the community, with some supports in place.

CONCLUSIONS OF LAW

1. Subsection (h)(1) of Section 19a-535 of the Connecticut General Statutes provides that except in the case of an emergency, as provided in subdivision (4) of this subsection, upon receipt of a request for a hearing to appeal any proposed transfer or discharge, the Commissioner of Social Services or the commissioner's designee shall hold a hearing to determine whether the transfer or discharge is being effected in accordance with this section. A hearing shall be convened not less than ten, but not more than thirty days from the date of receipt of such request and a written decision made by the commissioner or the commissioner's designee not later than thirty days after the date of termination of the hearing or not later than sixty days after the date of the hearing request, whichever occurs sooner. The hearing shall be conducted in accordance with chapter 54. In each case the facility shall prove by a preponderance of the evidence that it has complied with the provisions of this section. Except in the case of an emergency or in circumstances when the resident is not physically present in the facility, whenever the Commissioner of Social Services receives a request for a hearing in response to a notice of proposed transfer or discharge and such notice does not meet the requirements of subsection (c) of this section, the commissioner shall, not later than ten business days after the date of receipt of such notice from the resident or the facility, order the transfer or discharge stayed and return such notice to the facility. Upon receipt of such returned notice, the facility shall issue a revised notice that meets the requirements of subsection (c) of this section.
2. "Discharge" means the movement of a resident from a facility to a non-institutional setting. Conn. Gen. Stat. § 19a-535 (a)(4).
3. Section (b) of the Connecticut General Statutes § 19a-535 notes in part 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 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 or an advanced practice registered nurse. In each case where the welfare, health or safety of the resident is concerned the documentation shall be by the resident's physician or the resident's advanced practice registered nurse. Conn. Gen. Stat. § 19a-535 (b).
4. The Appellant no longer needs the services of the Facility, due to improved health.

5. In documenting the basis for the proposed discharge of the Appellant in his medical records—that the Appellant's condition had improved and that he no longer required skilled nursing level of care—the Facility complied with the requirements in section 19a-535 (b) of the Connecticut General Statutes.
6. 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. 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).
7. The Facility complied with the requirements of section 19a-535 (c)(1) of the Connecticut General Statutes with respect to providing notice of the proposed involuntary discharge to a resident.
8. 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 or advanced practice registered nurse 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 that 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 that 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 or advanced practice registered nurse 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. Conn. Gen. Stat. §19a-535 (e).

9. The Facility provided the Appellant with a discharge plan and addendum to the discharge plan that addressed the statutory requirements involved in an involuntary discharge of a resident, as codified in section 19a-535(e) of the Connecticut General Statutes.
10. No resident shall be involuntarily transferred or discharged from a facility if such transfer or discharge is medically contraindicated. Conn. Gen. Stat. § 19a-535 (f).
11. The proposed discharge of the Appellant to a non-institutional setting is not medically contraindicated.
12. The Facility complied with the statutory requirements for an involuntary discharge of the Appellant.

DECISION

The Appellant's appeal is DENIED.

Eva Tar - electronic signature
Eva Tar
Hearing Officer

cc: 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
Long Term Care 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 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.