

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

Client ID # [REDACTED]
Request # 823050

NOTICE OF DECISION
PARTY

[REDACTED]

Robert Powers, Administrator
Torrington Health & Rehabilitation Center
225 Wyoming Avenue
Torrington, CT 06790

PROCEDURAL BACKGROUND

On [REDACTED] 2017, [REDACTED] Rehabilitation Center, (the "Facility"), which is a [REDACTED] operated facility, issued a 30 Day Discharge Notice to [REDACTED] (the "Appellant") indicating its intent to involuntarily discharge the Appellant on [REDACTED] 2017 because the health or safety of the individuals in the Facility is endangered by the Appellant's actions.

On [REDACTED] 2017, the Appellant requested an administrative hearing to contest the Facility's proposed discharge.

On [REDACTED] 2017, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing at the Facility for [REDACTED] 2017.

On [REDACTED] 2017, 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 discharge the Appellant. The following individuals were present at the hearing:

[REDACTED] Appellant
[REDACTED] Appellant's Witness and Sister
[REDACTED] Administrator, [REDACTED]
Connecticut (the "the Facility") [REDACTED]

Amanda Otto, Facility Social Worker
 [REDACTED], Director of Nursing Services for the Facility
 Eva Torres-Maldonado, LCSW, Facility Corporate Office, Hartford, Connecticut
 Sybil, Hearing Officer

The hearing record remained open to allow the submission of additional information by the Appellant's sister and the Facility. On [REDACTED] the record closed.

STATEMENT OF THE ISSUE

The issue is whether the Facility acted in accordance with state law when it proposed to involuntary discharge the Appellant from the Facility.

FINDINGS OF FACT

1. The Appellant is a 54 year old (DOB [REDACTED]/62) individual. (Exhibit 2)
2. On [REDACTED] 2016 the Appellant was admitted to the Facility from [REDACTED] Connecticut. (Exhibit 6: Admission /Discharge History)
3. During the period of [REDACTED] 2016 through [REDACTED] 2016, the Appellant was admitted and discharged from the Facility several times. (Exhibit 6)
4. On [REDACTED] 2016, the Facility provided the Appellant a copy of their safety and visitation policies which covered drug use, smoking, visitation and room search. The Appellant signed the safety contract. (Exhibit 7: [REDACTED] Resident Policy, Exhibit 8: Safety Contract, [REDACTED]/17, Exhibit 32: Description of Events)
5. As a condition of the Appellant's admission into the Facility he agreed to meet with a representative from the [REDACTED] to discuss substance abuse treatment. (Administrator's Testimony, Exhibit 10: Social Service Progress Notes)
6. The Appellant met with the representative from [REDACTED] and declined their services. (Administrator's Testimony, Exhibit 10)
7. On [REDACTED] 2016, the Appellant was observed by a Facility staff member smoking in a non-smoking area while using his oxygen tank. (Administrator's Testimony, Exhibit 10, Exhibit 32)
8. On [REDACTED] 2016, the Appellant was observed by facility staff meeting someone in a van in the Facility parking lot. The van left the premises when the Nursing Supervisor approached the vehicle. The administrator met with the Appellant to discuss visitation policy. (Exhibit 10, Exhibit 32)

9. On [REDACTED] 2016, the Appellant was readmitted to the Facility for short-term care of 180 days after a 27 day stay at [REDACTED] Hospital in [REDACTED] Connecticut. (Appellant's Testimony, Exhibit 2: ASCEND Notice of Action ["NOA"] / PASRR)
10. The Appellant was admitted to the Facility with a diagnosis of anxiety disorder, chronic kidney disease, chronic obstructive pulmonary disease ("COPD"), Endocarditis, [REDACTED], [REDACTED], pulmonary embolism. The Appellant required physical therapy, respiratory therapy, medication administration and hands on assistance with activities of daily living ("ADL's") (Exhibit 2, Exhibit 4: PASRR Summary of Findings)
11. The Appellant takes the following medications: [REDACTED]
12. On [REDACTED] 2017, The Administrator filed a police report with the [REDACTED] Police Department because a staff member found [REDACTED] in the Appellant's room and he suspected it was [REDACTED]. The Appellant admitted he was [REDACTED]. (Exhibit 20: Police Report, [REDACTED] /17, Exhibit 32)
13. On [REDACTED] 2017, the Administrator filed another police report with the [REDACTED] Police Department because the Facility staff found a [REDACTED] in the Appellant's doorway and he [REDACTED] (Exhibit 21: Police Report, [REDACTED] /17, Exhibit 32)
14. On [REDACTED] 2017, the Facility administrator met with the Appellant to discuss drug use in the Facility. The Appellant denied any [REDACTED] (Exhibit 32)
15. The Appellant had repeated visits from an unauthorized visitor who would not sign in upon entry into the Facility. (Administrator's Testimony)
16. On [REDACTED] 2017, the Appellant was found unresponsive in his room. EMT services were called and the Appellant was treated with [REDACTED] prior to being transported to [REDACTED] Hospital for additional treatment. (Administrator's Testimony, Exhibit 28: Patient Care Report-Campion Ambulance Service, Inc., [REDACTED] /17, Exhibit 32)
17. On [REDACTED] 2017, the Administrator met with the Appellant, his sister and a representative from [REDACTED] to discuss the Appellant's readmission to the Facility. (Exhibit 32)
18. On [REDACTED] 2017, the Appellant was readmitted to the Facility from [REDACTED] [REDACTED] after a nine-day hospitalization. (Appellant's Testimony, Administrator's Testimony, Exhibit 32)

19. On [REDACTED] 2017, the Appellant as cited for a violation of the Facility smoking policy when a staff member found a lighter and a broken cigarette in the Appellant's room next to his belongings. The items were turned over to the Administrator. (Exhibit 25: Written Statement from [REDACTED], [REDACTED]/17)
20. The Appellant acknowledged he knew the lighter was in his jacket pocket but intended turn the items over to the Facility staff. (Appellant's Testimony, Exhibit 23: Written Statement from [REDACTED], Director of Social Services, [REDACTED]/17)
21. On [REDACTED] 2017, the Facility issued a Notice of Discharge to the Appellant, indicating that he would be discharged to a local motel because the health or safety of individuals in the Facility was endangered due to his actions and he no longer needed the services of a skilled facility. (Exhibit 1: Notice of Discharge dated [REDACTED]/17)
22. On [REDACTED] 2017, the Appellant requested an administrative hearing to contest the Facility's intent to discharge him to a local motel in [REDACTED] Connecticut. (Hearing Record)
23. The Appellant does not have a serious mental illness and is not a danger to self or others. (Exhibit 4, Exhibit 14: Psychiatric Diagnostic Consultation, [REDACTED]/17, Exhibit 15: Behavioral Health Follow-Up: [REDACTED]/17)
24. The Appellant is independent with all his activities of daily living (ADL's). (Exhibit 11: ADL Flow Record)
25. The Appellant frequently leaves the Facility and is able to ambulate without difficulty or signs of pain. (Exhibit 33: Discharge Plan)
26. On [REDACTED] 2017, Appellant was successfully discharged from his physical therapy sessions at the Facility. (Exhibit 5: Physical Therapy Discharge Summary, [REDACTED]/17, Exhibit 32)
27. On [REDACTED] 2017, the Appellant was successfully reached his goals set by the pulmonary rehabilitation program. (Exhibit 12: Respiratory Therapist Progress Notes, [REDACTED]/17)
28. On [REDACTED] 2017, the Facility staff nurse, [REDACTED], APRN, prepared a report that the Appellant was fit and healthy for the community and the Facility could consider discharge with support services. (Exhibit 33)
29. The Facility has arranged appropriate support services for the Appellant effective upon his discharge. (Exhibit 33)
30. The Appellant is working with Money Follows the Person program ("MFP") and has been approved for services. (Administrator's Testimony, Exhibit 10, Exhibit 31)

31. The Appellant states he is prepared to live in the community if discharged to the proper setting with appropriate support services. (Appellant's testimony)
32. As of the date of the hearing, the Appellant is waiting for a suitable apartment setting within the [REDACTED] community. (Appellant's testimony, Facility Social Worker's Testimony)

CONCLUSIONS OF LAW

1. Connecticut General Statutes ("Conn. Gen. Stat.") Section 19a-535(h)(1) authorizes the Commissioner of Social Services or the commissioner's designee to hold a hearing to determine whether a transfer or discharge is being affected in accordance with this section.
2. Section 19a-535(a)(4) of the Conn. Gen. Stat. provides "discharge" means the movement of a resident from a facility to a non-institutional setting.
3. Section 19a-535 (b) of the Conn. Gen. Stat. 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, a physician shall document the basis for transfer or discharge in the resident's medical record. 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.
4. Section 19a-535(c)(1) of the Conn. Gen. Stat. 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 know, 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, 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.

5. The Facility correctly provided the Appellant at least 30 days prior notice, in writing, of the proposed discharge date, which included the effective date of the discharge, the reason for discharge, a location to which he would be discharged and his appeal rights.
6. Section 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. 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 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 affects. 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 residents 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.
7. The Facility's proposal to discharge the Appellant does not comply with state statutes because there was no discharge plan developed and approved by the

Facility's medical director or the Appellant's personal physician.

DISCUSSION

The Facility did not present a written discharge plan as required by Conn. Gen. Stat. § 19a-535(e). Statute provides that 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. Since the Facility did not develop a written discharge plan that is in compliance with the state statutes, the Facility may not discharge the Appellant based on the notice sent on [REDACTED] 2017.

DECISION

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

ORDER

The Facility is ordered to rescind the Appellant's proposed discharge notice.



Sybil Hardy
Hearing Officer

Cc: [REDACTED], Administrator
[REDACTED]

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, Hartford, CT.

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, law, and 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.

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, if 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.