

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#: 831711

NOTICE OF DECISION

PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2017, ██████████ (the "Facility" or "██████████") issued a Notice to ██████████ (the "Appellant") of its intent to discharge her or transfer her to another facility by ██████████ 2017, for the reason that all residents are being relocated to allow for repairs to the septic system.

On ██████████ 2017, the Appellant requested an administrative hearing to contest her proposed discharge or transfer 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 at the Facility. The following individuals were present at the hearing:

██████████ Appellant  
██████████, Assistant Director of Nursing, ██████████  
██████████, Social Worker, ██████████  
James Hinckley, Hearing Officer

The hearing record was held open until [REDACTED] 2017 for the facility to provide additional information, and until [REDACTED] 2017 for time for the Appellant to comment on any additional information. No additional information was provided and on [REDACTED] 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 or transfer the Appellant from the Facility.

### **FINDINGS OF FACT**

1. The Appellant is currently a resident of [REDACTED], a skilled nursing facility. (Hearing Record)
2. The Appellant does not have, or need, anyone to act as her authorized representative. (Appellant's testimony)
3. The Facility recently suffered a failure of its septic system which resulted in sewage back-up and flooding of the building, including through the walls of some of the residents' rooms. (Ms. [REDACTED] testimony)
4. Both the Connecticut Department of Public Health ("DPH") and [REDACTED] the local health district for the town of [REDACTED], have notified the Facility that the septic system failure represents a health hazard to the residents which must be addressed. (Ms. [REDACTED]'s testimony)
5. The Facility's leaching fields are faulty, but the severity of the problem and the extent and duration of the necessary repairs cannot be determined until investigatory work is performed on the septic system. (Ms. [REDACTED]'s testimony)
6. Work cannot begin on the septic system until all of the residents have been transferred or discharged. (Ms. [REDACTED] testimony)
7. Once work begins, water flow to the Facility will be reduced to zero and there will be no working showers, running toilets, ability for the kitchen to prepare food, etc. (Ms. [REDACTED]'s testimony)
8. The building will not be suitable for human habitation when it has no running water. (Ms. [REDACTED] testimony, Appellant's testimony)
9. When DPH first became aware of the septic problems, it ordered the Facility to transfer or discharge all of its residents within 7 days. (Ms. [REDACTED] testimony)

10. Subsequently, DPH extended its deadline by an additional 30 days, until [REDACTED] 2017, because the Facility was unable to meet the original deadline. (Ms. [REDACTED]'s testimony)
11. [REDACTED] is a 120 bed facility; it had 108 residents when the problem with the septic system began, and has since transferred most of its residents to other facilities, so that only 30 remain. (Ms. [REDACTED] testimony)
12. The Facility has had discussions with more than 50 other facilities within a 15 mile radius about absorbing its residents who must be transferred; the other facilities are willing to accept residents from [REDACTED] depending upon bed availability. (Ms. [REDACTED]'s testimony)
13. The Facility prepared packets for its residents, listing all the facilities within a 15 mile radius, along with their star ratings, and asked residents to choose their top four to which they would prefer to be transferred. (Ms. [REDACTED] testimony)
14. The Appellant has been working with the Money Follows the Person ("MFP") program for the last six months to try to locate a suitable apartment in the community. (Appellant's testimony)
15. It is unlikely that the Appellant's MFP housing coordinator will be able to locate suitable community housing for her in the limited timeframe within which all the [REDACTED] residents must be transferred or discharged. (Appellant's testimony, [REDACTED] testimony)
16. There is no indication that the Appellant's status with MFP will change in any way if she transfers from [REDACTED] to a different skilled nursing facility while she is awaiting community placement. (Appellant's testimony, Ms. [REDACTED] testimony)
17. The Appellant has no special medical needs, and her basic housing, medical and other needs could be met at any skilled nursing facility. (Appellant's testimony)
18. The Appellant would prefer to be discharged to the community, but agrees that [REDACTED] would be uninhabitable if there were no running water. She would be willing to accept a transfer to a different facility if it were the only option available within the timeframe, except that she has not yet chosen any preferred facilities from the list prepared by [REDACTED]. (Appellant's testimony)

19. On [REDACTED] 2017, the Facility issued a notice to the Appellant informing her that she would be transferred to a facility of her choice by [REDACTED] 2017, because all residents are being relocated to allow for repairs to the septic system. (Appellant's testimony, [REDACTED] testimony)
20. On [REDACTED] 2017, the Appellant requested a hearing to contest the facility's proposal to involuntarily transfer her to another facility. (Ex. 1, Testimony)
21. [REDACTED] is holding in abeyance any action to transfer the Appellant involuntarily, pending the outcome of this hearing. (Ms. [REDACTED]'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 movement of a resident from a facility to a noninstitutional setting.
3. Conn. Gen. Stat. §19a-535(a)(3) provides that the term "transfer" means the movement of a resident from one facility to another facility or institution, including, but not limited to, a hospital emergency department, if the resident is admitted to the facility or institution or is under the care of the facility or institution for more than twenty-four hours.
4. Conn. Gen. Stat. § 19a-535(a)(6) provides that the term "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.
5. The situation existing at [REDACTED] meets the requirements to be considered an emergency, because the health, safety or welfare of the Appellant and other facility residents is endangered by the current conditions resulting from the septic failure, and would be further endangered if all running water to the facility had to be shut off, resulting in no drinkable water and no working plumbing.
6. Conn. Gen. Stat. §19a-535(b) provides in part, 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...the health or safety of individuals in the facility is endangered....

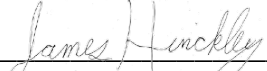
7. Conn. Gen. Stat. §19a-535(c)(1) provides that before effecting any transfer or discharge of a resident from the facility, the facility shall notify, in writing, the resident and the resident's guardian or conservator, if any, or legally liable relative or other responsible party if known, of the proposed 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 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.
8. The notice given by [REDACTED] to the Appellant proposing to transfer her to another facility was in accordance with the requirements of section 19a-535(c) of the Connecticut General Statutes. Although the notice was not given at least thirty days prior to the Appellant's proposed transfer, the notice was given as many days before the transfer as practicable, which is allowable where the health or safety of individuals in the facility is endangered.
9. Conn. Gen. Stat. §19a-535(e) provides in part 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 a 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....

10. No discharge plan was required for the Appellant because her proposed transfer was the result of an emergency situation existing at the facility. In addition, the Appellant agrees that all of her needs can be suitably met at any other skilled nursing facility that she may be transferred to.
11. The Facility acted in accordance with state law when it proposed to involuntarily transfer the Appellant to another facility, due to the existence of an emergency requiring that the facility discharge or transfer all its residents.

**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.