

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

██████████ 2019
Signature Confirmation

Case ID # ██████████
Client ID # ██████████
Request # 146004

NOTICE OF DECISION
PARTY

██████████

██████████

PROCEDURAL BACKGROUND

On ██████████ 2019, ██████████ in ██████████ Connecticut (the "Facility"), issued a 30 Day Discharge Notice to ██████████ (the "Appellant") indicating its intent to involuntarily discharge him on ██████████ 2019 because he failed to pay his patient liability established by the Department of Social Services (the "Department") and owes the Facility \$18,474.00.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the Facility's proposed discharge.

On ██████████ 2019, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing at the Facility for ██████████ 2019.

On ██████████, 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] Walzer, Appellant
 [REDACTED], Administrator, [REDACTED] Connecticut
 [REDACTED], Social Worker, [REDACTED] Connecticut
 [REDACTED] Business Office Manager, [REDACTED] Connecticut
 [REDACTED], Assistant Business Office Manager, [REDACTED]
 Connecticut
 Sybil Hardy, Hearing Officer

STATEMENT OF THE ISSUE

The issue 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 80-years old and lives in a skilled nursing facility receiving long-term care services. (Appellant's Testimony, Hearing Record)
2. The Appellant does not have an authorized representative or power of attorney. (Appellant's Testimony)
3. The Appellant receives a monthly gross income of \$1,395.00 from [REDACTED]. (Appellant's Testimony)
4. On [REDACTED] 2018, the Facility admitted the Appellant for rehabilitation services being treated by [REDACTED] in [REDACTED] Connecticut when he suffered from complications from a stroke. (Administrator's Testimony)
5. Effective [REDACTED] 2018, the Appellant was approved for long-term care at the Facility. (Business Manager's Testimony)
6. Effective [REDACTED] 2018, the Appellant was approved for assistance through the Department's Medicaid under the Long-Term Care program. The Appellant has a patient liability amount of \$1,335.00 per month. (Administrator's Testimony, Appellant's Testimony)
7. Although the Appellant was notified of his patient liability amount, he has failed to make his monthly payments to the Facility. (Administrator's Testimony, Exhibit A: Statement Summary from [REDACTED] 19 and Statement Summary from [REDACTED] /19)
8. On [REDACTED] 2018, the Appellant signed a promissory note to pay the Facility \$6,485.00 by [REDACTED], 2019. (Exhibit 1: Promissory Notes)

9. On [REDACTED] 2019, the Appellant signed a promissory note to pay the Facility \$10,376.00 by [REDACTED] 2019. (Exhibit 1)
10. On [REDACTED] 2019, the Appellant signed a promissory note to pay the Facility \$11,787.00 by [REDACTED] 2019. (Exhibit 1)
11. On [REDACTED] 2019, the Facility issued a Notice of Discharge to the Appellant, indicating that he would be discharged to the [REDACTED] at [REDACTED] Connecticut on [REDACTED] 2019, for non-payment of his patient liability and owes the Facility \$18,474.00. (Exhibit C: Involuntary Discharge Notice, [REDACTED] 19)
12. On [REDACTED] 2019, the Appellant requested an administrative hearing to contest the Facility's intent to discharge him to the shelter in [REDACTED] Connecticut. (Hearing Record, Exhibit D: Hearing Request [REDACTED] /19)
13. As of [REDACTED] 2019, the Appellant owes a past due amount of \$19,809.00 to the Facility. (Business Office Manager's Testimony, Exhibit A)
14. The Appellant was approved for services through the Department's Money Follows the Person program and is making plans to return to the community. (Appellant's Testimony, Social Worker's Testimony)
15. The Appellant is waiting for an apartment to be approved in order to leave the Facility. (Appellant's Testimony)
16. The Appellant continues to pay a monthly storage fee of approximately \$300.00 while he waits for approval of his apartment in the community. (Appellant's Testimony)

CONCLUSIONS OF LAW

1. Section 19a-53(h)(1) of the Connecticut General Statutes 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. Conn. Gen. Stat. § 19a-53(h)(1)
2. Connecticut General Statutes § 19a-535(a)(4) provides "discharge" means the movement of a resident from a facility to a non-institutional setting. Conn. Gen. Stat. § 19a-535(a)(4)
3. Section 19a-535(c)(1) of the Connecticut General Statutes § 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. Conn. Gen. Stat. § 19a-535(c)(1)

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.

4. Conn. Gen Stat. § 19a-535(b) 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 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.
5. Conn. Gen. Stat. § 19a-535(a)(5) provides in part that "self-pay resident" means a resident who is not receiving state or municipal assistance to pay for the cost of care at a facility.
6. Conn. Gen. Stat. § 19a-535(d) provides in relevant part that no resident shall be transferred or discharged from any facility as a result of a change in the resident's

status from self-pay or Medicare to Medicaid provided the facility offers services to both categories of residents.

The Appellant is not a self-pay resident.

The Facility incorrectly determined that they could discharge the Appellant for non-payment because he is not a self-pay resident. The Facility's proposal to discharge the Appellant does not comply with state statutes.

DISCUSSION

The Facility may not discharge the Appellant for non-payment because he is an active Medicaid recipient and the Facility receives Medicaid payments. The Appellant has been informed of his patient liability amount and is not complying with his responsibility. The Facility does have the right to seek other recourse for the Appellant's failure to make his monthly patient liability payments.

DECISION

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

ORDER

1. The Facility is ordered to rescind the [REDACTED] 2019, notice of involuntarily discharge.
2. Compliance with this order is due back to the undersigned no later than [REDACTED] 2019.



Sybil Hardy
Hearing Officer

Cc: [REDACTED] Administrator
[REDACTED]

Desiree Pina, Long Term Care Ombudsman Program
Department of Social Services, 55 Farmington Avenue, Hartford, CT 06106

Donna Ortelte, Connecticut Department of Public Health, Facility, 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.