

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

[REDACTED]
SIGNATURE CONFIRMATION

HEARING ID#: [REDACTED]

NOTICE OF DECISION

PARTY

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED], Administrator
[REDACTED]
[REDACTED]
[REDACTED]

PROCEDURAL BACKGROUND

On [REDACTED] 2018, [REDACTED] (the "Facility" or "[REDACTED]") issued a 30 Day Notice to [REDACTED] (the "Appellant") of its intent to involuntarily discharge her from the facility on, or after [REDACTED], for the reason that her behaviors were a risk to the safety and welfare of others in the building.

On [REDACTED], the Appellant requested an administrative hearing to appeal the proposed involuntary discharge.

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

On [REDACTED], 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:

The Appellant

[REDACTED], Director of Social Services, [REDACTED]
[REDACTED], Facility Social Worker, [REDACTED]
James Hinckley, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether [REDACTED]'s proposed involuntary discharge of the Appellant from its skilled nursing facility is being effected in accordance with state statute.

FINDINGS OF FACT

1. The Appellant is a [REDACTED] year old woman and a Medicaid recipient. (Appellant's testimony, Ms. [REDACTED]'s testimony)
2. The Appellant is not conserved, and does not have any authorized representative or other responsible party who acts on her behalf. (Appellant's testimony)
3. On [REDACTED], the Appellant was admitted to [REDACTED], a long term care facility that provides skilled nursing care. (Hearing Record)
4. At the time of her admission to [REDACTED] the Appellant was suffering from an abscess requiring antibiotic treatment, and required substantial assistance with her ADLs. (Appellant's testimony, Ms. [REDACTED]'s testimony)
5. The Appellant is a smoker. (Hearing Record)
6. [REDACTED]'s smoking policy prohibits residents from possessing smoking materials at any time other than during designated smoking breaks, at which time residents are dispensed a single cigarette from a secure storage location at the front desk and led by facility staff to a designated smoking area where the cigarette is lit by the staff member. (Ms. [REDACTED]'s testimony)
7. On [REDACTED], the facility reviewed its *Smoking Protocol*, *Smoking Guidelines*, and *Notification of Hazardous or Precautionary Items Education* documents with the Appellant, and the Appellant signed all three documents. (Ex. 2A: *Smoking Protocol*, Ex. 2B: *Smoking Guidelines*, Ex. 2C: *Notification of Hazardous or Precautionary Items Education*)
8. On [REDACTED], facility staff detected the smell of smoke in the bathroom of the Appellant's room and conducted a search of the room but did not discover smoking materials. (Ex. 1: Departmental Notes)
9. On [REDACTED], facility staff conducted a search of the Appellant's room due to the presence of the smell of cigarette smoke in the room and

- bathroom, but no violation was cited and the Appellant denied smoking in the facility. (Ex. 1)
10. On [REDACTED], the Appellant was found to have an empty cigarette box and lighter hidden in her socks. (Ex. 1)
 11. The Appellant has smoked in her room in the past. (Appellant's testimony)
 12. The lighter and cigarette box found on the Appellant's person on [REDACTED], belonged to the Appellant. (Appellant's testimony)
 13. On [REDACTED], the Facility issued to the Appellant a *Notice of Intent to Discharge*, proposing to discharge her from the facility on or after [REDACTED] for the reason that her behaviors were a risk to the safety and welfare of others in the building, because she was found in possession of a lighter and empty cigarette box and admitted to smoking in the facility, and copies of the notice were sent to the Connecticut State Long Term Care Ombudsman and the Office of Protection and Advocacy for Persons with Disabilities. (Ex. 7: *Notice of Intent to Discharge*)
 14. The Facility did not determine that the Appellant's violations of its safety policies necessitated her immediate discharge for emergency reasons, but the Appellant has been reeducated on the Facility's safety policies and the Facility has closely monitored her compliance with the policies since the violations occurred. (Ms. [REDACTED]'s testimony, Ex. 4: Safety Policy Documents signed by the Appellant on [REDACTED], Ex. 5: Safety Policy Document signed by the Appellant on [REDACTED])
 15. The *Notice of Intent to Discharge* proposed to discharge the Appellant to [REDACTED], which is a homeless shelter, or to another residential alternative of the Appellant's preference, and offered the services of Facility social work staff to assist her with plans for discharge. (Ex. 7)
 16. Attached to the *Notice of Intent to Discharge* was a Discharge Plan signed by the Administrator of the Facility, the Medical Director, the Director of Nursing and the Discharge Planner. (Ex. 7, Attachment B)
 17. The Appellant does not have a personal physician. (Appellant's testimony)
 18. On [REDACTED], the Appellant was also given a [REDACTED] *Reentry Services Guide* which provided a list of housing options and other services available in the area. (Ms. [REDACTED]'s testimony, Appellant's testimony, Ex. 7, Attachment B)

19. Since her admission to the Facility, the Appellant's medical condition has improved significantly, and she is now mostly independent with her ADLs. (Ms. ██████'s testimony, Appellant's testimony)
20. An evaluation of the Appellant's Functional Status performed on ██████ found that she was mostly independent with her ADLs, and that the highest level of staff support needed with any ADL was supervision or setup. (Ex. 6: Functional Status evaluation)
21. The Facility never contemplated discharging the Appellant to another skilled nursing facility, because the Appellant does not require the level of care provided by a skilled nursing facility at this time. (Ms. ██████'s testimony)
22. The Appellant still receives physical therapy. (Appellant's testimony, Ms. ██████'s testimony)
23. The Appellant can continue to receive physical therapy while residing in a shelter, and can receive other services such as transportation to medical appointments and dispensing of her medications; Facility staff can assist the Appellant in making arrangements for such services once a residential placement is decided upon. (Ms. ██████'s testimony)
24. The Facility does not have the ability to arrange for the Appellant's admission to a specific shelter or other residential placement; nursing facilities used to be able to make such arrangements, but now all placements must be coordinated through the "211 – InfoLine" service, and the Appellant has been informed of this but has not yet availed herself of the InfoLine service. (Ms. ██████'s testimony, Appellant's testimony)
25. The issuance of this decision is timely under Connecticut General Statutes 19a-535(h)(1) which requires that a decision be issued not later than thirty days after the termination of the hearing or not later than sixty days after the date of the hearing request, whichever occurs sooner. Sixty days from ██████ is ██████ and thirty days from ██████ is ██████. Therefore, this hearing decision is due not later than ██████. (Hearing Record, calendar)

CONCLUSIONS OF LAW

1. Section 19a-535(h)(1) 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 19a-535.

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 (b) provides in relevant part “A facility shall not transfer or discharge a resident from the facility...unless... the health or safety of individuals in the facility is endangered”, “...In each case the basis for transfer or discharge shall be documented in the resident’s medical record by a physician. In each case where the welfare, health or safety of the resident is concerned the documentation shall be by the resident’s physician...”

That the Appellant possessed an item, a cigarette lighter, which was in violation of the Facility’s safety policies is undisputed, and her possession of such an item that could have caused a fire represented a genuine risk to the health and safety of Facility residents. The violation was documented in the Appellant’s medical records and (because the Appellant did not have a personal physician) the Facility’s Medical Director signed the Discharge Plan, which was an attachment to and part of the *Notice of Intent to Discharge* that outlined the basis for the proposed discharge.

In documenting the basis for the proposed discharge of the Appellant, the facility complied with the requirements in section 19a-535(b) of the Connecticut General Statutes.

4. Conn. Gen. Stat. §19a-535 (c) provides “(1) 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."

The *Notice of Intent to Discharge* was issued to the Appellant pursuant to the requirements in 19a-535(c) of the Connecticut General Statutes; the proper individuals were noticed of the proposed discharge, the effective date, the reasons that were the basis for the proposed discharge, the location where the Appellant was intended to be discharged, and of the Appellant's right to appeal.

5. Conn. Gen. Stat. §19a-535 (e) provides "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 service 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

The Appellant's discharge plan was developed by the Facility's Medical Director (again, because the Appellant did not have a personal physician) in conjunction with its nursing director and social worker. To the extent possible, the plan addressed the acceptability of the placement to the Appellant, and offered her choices of discharge location, and also assistance from social work staff in planning for her discharge and setting up services after the discharge. Because the Appellant had not yet chosen a discharge

location at the time the plan was developed, it was necessarily limited in its specificity.

The discharge plan was developed by the Facility pursuant to the requirements in 19a-535 (e) of the Connecticut General Statutes.

6. Conn. Gen. Stat. §19a-535(h)(5) provides “Except in the case of a transfer or discharge effected pursuant to subdivision (4) of this subsection, (A) an involuntary transfer or discharge shall be stayed pending a decision by the commissioner or the commissioner’s designee, and (B) if the commissioner or the commissioner’s designee determines the transfer or discharge is being effected in accordance with this section, the facility may not transfer or discharge the resident prior to fifteen days from the date of receipt of the decision by the resident and the resident’s guardian or conservator, if any, or the resident’s legally liable relative or other responsible party if known.”

The hearing decision finds that the discharge of the Appellant is being effected in accordance with § 19a-535 of the Connecticut General Statutes.

██████████ may not discharge the Appellant sooner than fifteen days from the date of the Appellant’s receipt of this decision.

DECISION

The Appellant’s appeal is **DENIED**.


James Hinckley
Hearing Officer

cc: Donna Ortelle, Connecticut Dept. of Public Health
Desiree 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.