

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

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

Case ID # ██████████
Client ID # ██████████
Request # 142230

NOTICE OF DECISION

PARTY

██████████

PROCEDURAL BACKGROUND

On, ██████████ 2019, ██████████ (the "facility") delivered a Notice of Intent to Discharge ██████████ (the "Appellant") from care on or after ██████████ 2019, to ██████████ ("homeless shelter") in ██████████, Connecticut.

On ██████████ 2019, the Appellant requested an administrative hearing to contest the facility's proposed action to discharge her from the facility.

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

On ██████████ 2019, the OLCRAH reissued a notice scheduling the administrative hearing for ██████████, 2019.

On ██████████, 2019, in accordance with sections 19a-535 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing at the facility located at ██████████ Connecticut.

The following individuals were present at the hearing:

██████████, Appellant

Ashley Jimenez, Social Worker, [REDACTED]
Swati Sehgal, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the facility complied with the statutory requirements for an involuntary discharge of a patient when it proposed to discharge the Appellant to the homeless shelter.

FINDINGS OF FACT

1. On [REDACTED] 2017, the Appellant entered [REDACTED] (the "facility"), a skilled nursing facility, from the hospital. (Appellant's Testimony)
2. The Appellant's primary diagnosis at the time of admission to the facility was chronic viral hepatitis C, unspecified cirrhosis of the liver, other ascites, hypertension, bipolar disorder, cocaine abuse, and opioid dependence. (Exhibit C: Face Sheet from [REDACTED])
3. The facility informed the Appellant of facility policies and rules at the time of the admission which included hazardous substance education and consequences for violations. (Facility's Testimony)
4. The Appellant was found using narcotics on the premises of the facility. (Facility's Testimony)
5. On [REDACTED], 2019, the Appellant reviewed and signed the facility's Smoking Policy Agreement including Notification of Hazardous or Precautionary Items Education. (Exhibit 1: [REDACTED] Smoking Guidelines, Contact, Protocol Agreement and Notification of Hazardous Items signed [REDACTED], 2019)
6. The Appellant understands the facility's illegal substance policy and acknowledges she violated the facility's policies by using narcotics on site. (Appellant's Testimony)
7. The Appellant is independent with the activity of daily living. (Exhibit 2: Physician's order, Exhibit 4: ADL Assistance and Support Document)
8. The Appellant needs some assistance with self-care. (Exhibit 2 and Exhibit 4)

9. The Appellant is working with Money Follows the Person and waiting for housing certificate to secure an apartment in the community. (Facility's Testimony)
10. The facility provides the Appellant with medication administration. (Facility Testimony)
11. Medication administration can be provided to the Appellant while residing in the community. (Facility's Testimony)
12. The Appellant can receive assistance with self-care while residing in the community. (Facility's Testimony)
13. On [REDACTED], 2019, the facility issued the Appellant a Notice of Intent to Discharge signed by the Administrator of the facility. The facility informed the Appellant of their intent to discharge the Appellant to a homeless shelter on or after [REDACTED], 2019, because the Appellant's "behaviors are a risk to the safety and welfare of others in the building." The facility cites the reason for discharge as having sold illegal narcotics to residents who required hospitalization and treatment after using resulting in the violation of hazardous substances policy. (Exhibit C: Notice of Intent to Discharge)
14. On [REDACTED], 2019, the facility issued the Appellant a written discharge plan signed by the Administrator, Medical Director, Director of Nursing; and, Discharge Planner. The plan lists the Appellant to be discharged to a local shelter or sober house with the assistance of the facility's social work staff. Assistance with referrals to community-based services agencies for follow-up care to be made by the facility's social work staff upon discharge. The facility provided the Appellant with a copy of the Greater Hartford Reentry Services booklet as a resource to locate services while in the community. (Exhibit D: Notice of Intent to Discharge)
15. 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 [REDACTED], 2019, is [REDACTED] 2019, and thirty days from [REDACTED], 2019, is [REDACTED], 2019. Therefore, this hearing decision is due not later than [REDACTED] 2019, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 19a-535(a) of the Connecticut General Statutes (“Conn. Gen. Stat.”) provides for the purposes of this section: (1) “Facility” means an entity certified as a nursing facility under the Medicaid program or an entity certified as a skilled nursing facility under the Medicare program or with respect to facilities that do not participate in the Medicaid or Medicare programs, a chronic and convalescent nursing home or a rest home with nursing supervision as defined in section 19a-521; (2) “continuing care facility which guarantees life care for its residents” has the same meaning as provided in section 17b-354; (3) “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) “discharge” means the movement of a resident from a facility to a non-institutional setting; (5) “self-pay resident” means a resident who is not receiving state or municipal assistance to pay for the cost of care at a facility, but shall not include a resident who has filed an application with the Department of Social Services for Medicaid coverage for facility care but has not received an eligibility determination from the department such application, provided the resident has timely responded to requests by the department for information that is necessary to make such determination; and (6) “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.

2. State statute 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, 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. 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. [Conn. Gen. Stat. § 19a-535(b)]

3. The Appellant's violation of the facility's rules endangered the health and safety of residents and staff at the facility.
4. State statute provides that 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)]
5. The facility correctly determined the Appellant does not require continuous skilled nursing services and needed services can be provided to the Appellant in the community.
6. State statute 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)]

7. The facility correctly issued the Appellant a notice of the proposed discharge date and allowed at least 30 days.
8. State statute 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 effects. 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 resident's personal physician if the discharge plan was prepared by the medical director, to the resident or 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. State statute provides that the facility shall be responsible for assisting the resident in finding an appropriate placement. [Conn. Gen. Stat. 19a-535(g)]
10. The facility has met the statutory requirement of formulating a discharge plan to include a written evaluation of the effects of the transfer, or discharge on the resident, a statement of an action taken to minimize such effects, and an outline of care and services which the resident would receive upon discharge.
11. The facility complied with the statutory requirements for an involuntary discharge of a patient when it proposed to discharge the Appellant to a homeless shelter.

DISCUSSION

The facility has initiated proceedings to discharge the Appellant from its care as the Appellant has failed to follow the facility's policies endangering her health and safety and the potential health and safety of other residents. The facility correctly issued the Appellant proper notification and has complied with the requirements

to discharge the Appellant based on the 30-day notice presented to the Appellant on [REDACTED] 2019.

The Appellant claimed that she is totally dependent on three of her activity of daily living; however, the documents provided by the facility do not support the Appellant's claim. The Appellant needs some assistance and could receive that while living out in the community.

DECISION

The Appellant's appeal is denied.



Swati Sehgal
Fair Hearing Officer

CC: Donna Ortelle
Connecticut Department of Public Health
410 Capitol Ave. MS#12HSR
P.O. Box 340308
Hartford, CT 06134-0308

Desiree Pina, Connecticut State Long Term Care Ombudsman
Department of Social Services
55 Farmington Ave.
Hartford, CT 06105

Administrator
[REDACTED]

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 Ave., 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 Ave., 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.