

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

██████████ 2019
SIGNATURE CONFIRMATION

██████████
Request # 147741

NOTICE OF DISMISSAL
PARTY

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PROCEDURAL BACKGROUND

On ██████████ 2019, ██████████, (“the facility”) issued a Notice of Discharge to ██████████ (the “Appellant”), indicating its intent to involuntarily discharge the Appellant from its facility to a location of his choice on ██████████ 2019.

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 the administrative hearing for ██████████ 2019.

On ██████████ 2019, in accordance with sections 19a-535, 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing:

██████████, Appellant
██████████, Regional Ombudsman, Appellant’s Advocate
██████████, Social Worker, ██████████
██████████, Administrator, ██████████
Carla Hardy, Hearing Officer

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 the Appellant from its facility.

FINDINGS OF FACT

1. Prior to [REDACTED] 2019, the Appellant was admitted to [REDACTED] [REDACTED] (“the facility”). (Hearing Record)
2. The Appellant was notified of the facility’s smoking policy. (Facility’s Testimony)
3. The Appellant was caught smoking in the facility. (Facility’s Testimony)
4. On [REDACTED] 2019, the facility issued a Notice of Discharge to the Appellant. The reason the facility is seeking to discharge the Appellant is that the safety or safety of individuals in the nursing facility is endangered. (Appellant’s Exhibit B: Notice of Discharge, [REDACTED]/19)
5. There have been no further incidences of smoking in the facility since [REDACTED] 2019. (Facility’s Testimony)
6. On [REDACTED] 2019, as a result of the Appellant’s compliance with the smoking policy, the facility rescinded the 30-day involuntary discharge notice that was given to the Appellant on [REDACTED] 2019. (Exhibit 1: Notice of Rescission of Discharge, [REDACTED]/19)
7. The Appellant is in agreement with the facility’s rescission of the proposal to discharge him from the facility. (Appellant’s Testimony)
8. 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 30 days after the date on which the hearing record is closed or not later than sixty days after the date of the hearing request, whichever occurs sooner. The hearing was requested on [REDACTED] 2019. Therefore, this decision is due not later than [REDACTED] 2019, and is therefore timely.

CONCLUSIONS OF LAW

1. Section 19a-535(h)(1) of the Connecticut General Statutes (“Conn. Gen. Stat.”) 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 17b-2 & 17b-262 of the Connecticut General Statutes designates that the Department is the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act and may make such regulations as are necessary to administer the medical assistance program.
3. "The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178 (1994) (citing Conn. Gen. Stat. § 17b-10; *Richard v. Commissioner of Income Maintenance*, 214 Conn. 601, 573 A.2d 712 (1990)).
4. Uniform Policy Manual ("UPM") § 1570.25 (C)(2)(k) provides that the Fair Hearing Official renders a Fair Hearing decision in the name of the Department, in accordance with the Department's policies and regulations. The Fair Hearing decision is intended to resolve the dispute.

UPM § 1570.25(F)(1) provides that the Department must consider several types of issues at an administrative hearing, including the following:

- c. discontinuance, termination, or reduction of benefits.

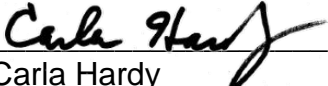
The Facility has rescinded its proposal to discharge the Appellant from the facility. Thus, the Appellant will not experience any loss of benefits.

The Appellant's hearing issue has been resolved, therefore, there is no issue on which to rule. "When the actions of the parties themselves cause a settling of their differences, a case becomes moot." *McDonnell v. Maher*, 3 Conn. App. 336 (Conn. App. 1985), citing, *Heitmuller v. Stokes*, 256 U.S. 359, 362-3, 41 S.Ct. 522, 523-24, 65 L.Ed. 990 (1921).

The proposed discharge has been rescinded by the Facility; there is no practical relief that can be afforded through an administrative hearing.

DECISION

The Appellant's appeal is **DISMISSED** as moot.



Carla Hardy
Hearing Officer

Pc: Donna Ortelle, CT Department of Public Health, 410 Capitol Avenue, MS#
12HSR, P.O. Box 340308, Hartford, CT 06134
Desiree Pina, Regional Office 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. 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.