

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

[REDACTED], 2023  
Signature Confirmation

Case ID # [REDACTED]  
Client ID # [REDACTED]  
Request # [REDACTED]

**NOTICE OF DECISION**  
**PARTY**

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

**PROCEDURAL BACKGROUND**

On [REDACTED], 2022, [REDACTED] (“the “Facility”) issued a Notice of Emergency Transfer To A Hospital to [REDACTED] (the “Appellant”) indicating its intent to involuntarily discharge the Appellant, citing as its reason for discharge that her welfare or the welfare of others would be endangered if she is not discharged.

On [REDACTED], 2022, the Appellant requested an administrative hearing to contest the Facility’s proposed discharge.

On [REDACTED], 2022, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling an administrative hearing at Hartford Hospital for [REDACTED], 2022.

On [REDACTED], 2022, in accordance with Connecticut General Statutes, §§ 19a-535 and 4-176e to 4-184, inclusive, the OLCRAH held an administrative hearing to address the Facility’s intent to discharge the Appellant.

The following individuals participated in the hearing:

[REDACTED], Appellant’s Conservator  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Joseph Davey, Administrative Hearing Officer

The Appellant did not attend the hearing; she was represented by her conservator.

At the Appellant’s request, the hearing record remained open on [REDACTED], 2022, for the submission of additional information by [REDACTED] and the Facility. Information was submitted by both parties and the hearing record closed on [REDACTED], 2022.

A separate decision has been issued for the issue of failure to readmit.

**STATEMENT OF THE ISSUE**

The issue is whether the Facility followed state law and federal regulation when it proposed to involuntarily discharge the Appellant.

**FINDINGS OF FACT**

1. On [REDACTED], 2021, the Appellant was admitted to the Facility for rehabilitation due to leg pain. (Facility’s Exhibit 1: [REDACTED] Timeline, Facility’s Exhibit 5: Letter from [REDACTED] dated [REDACTED], Facility’s testimony).
2. The Appellant’s past medical history includes a diagnosis of schizophrenia, generalized anxiety disorder, and insomnia. (Facility’s Exhibit 3: [REDACTED] Prescriber’s Note dated [REDACTED])
3. Between admission and [REDACTED], 2022, the Facility emergently transferred the Appellant to a hospital eight (8) separate times. Reasons specified for the transfers during this period included aggressive behavior, threatening staff, threatening residents, refusing to take medication, and throwing objects. (Facility’s Exhibit 1)
4. On [REDACTED], 2022, the Facility transferred the Appellant to a hospital for verbally abusing staff, chasing them down the hallway, and hitting herself (self-harm.) (Facility’s Exhibit 1)

5. Between [REDACTED], 2022, and [REDACTED], 2022, the Facility transferred the Appellant to a hospital a further four (4) times for reasons including refusing to take medication, belligerence, delusional behavior, threatening behavior, and small bowel obstruction. (Facility's Exhibit 1)
6. On [REDACTED], 2022, the Facility called Emergency Medical Services ("EMS") and the [REDACTED] Police Department ("PD") on the Appellant for aggressive behavior and self-harm (hitting herself.) EMS and PD left without removing the Appellant from the Facility. (Facility's Exhibit 1)
7. On [REDACTED], 2022, the Appellant assaulted a wheelchair-bound resident of the Facility. The Appellant punched the resident in the abdomen, causing the resident to be hospitalized. The Facility called the PD and after they arrived, the Appellant was subsequently transferred to a hospital. No police report was filed. (Facility's Exhibit 1, Facility's testimony)
8. On [REDACTED], 2022, the hospital returned the Appellant to the Facility. Upon her return, the Appellant was screaming, intimidating other residents, and displaying erratic behavior. The Facility called EMS and the Appellant was taken on a stretcher to a hospital. (Facility's Exhibit 1)
9. On [REDACTED], 2022, the hospital returned the Appellant to the Facility. The Appellant went to the room door of the resident she had previously assaulted and threatened to kill her. A supervisor from the facility had to intervene by standing in front of the resident's door to block the Appellant from attempting to enter. The Appellant was then transferred to a hospital. (Facility's Exhibit 1, Facility's testimony)
10. On [REDACTED], 2022, the Appellant was screaming and pounding on the walls of her room. The Appellant then exited the room and began punching hand sanitizers that were affixed to the walls outside each of the resident's rooms. The Facility then initiated an emergency transfer of the Appellant to [REDACTED] ["REDACTED"]. (Facility's Exhibit 1, Facility's Testimony)
11. On [REDACTED], 2022, the Facility submitted a "Notice of Emergency Transfer To A Hospital" form to the Appellant, [REDACTED], and the Appellant's conservator at the time, [REDACTED]. (Facility's Exhibit 4: Notice of Emergency Transfer form dated [REDACTED], Facility's Testimony)
12. On [REDACTED], 2022, [REDACTED] staff walked the Appellant back to the Facility and dropped her off on Facility grounds. [REDACTED] did not provide any forms or paperwork to the Facility. The Facility sent the Appellant back to [REDACTED] via ambulance on the same day. (Facility's testimony, [REDACTED] testimony)

13. On [REDACTED], 2022, Attorney [REDACTED] was appointed as the Appellant's conservator. (Appellant's Exhibit 2: Certificate of Conservatorship dated [REDACTED])
14. On or about [REDACTED], 2022, the Facility electronically reported the Appellant's involuntary transfer/discharge to the State Ombudsman portal. (Facility's Testimony)
15. At the time of the hearing, the Appellant remains at [REDACTED]. (Facility's testimony, [REDACTED] testimony)
16. The issuance of this decision is timely under Connecticut General Statutes ("Conn. Gen. Stat.") §19a-535 (h) (1) which requires that a decision be issued not later than [REDACTED] days after the termination of the hearing or not later than [REDACTED] days after the date of the hearing request, whichever occurs sooner. The hearing was requested on [REDACTED], 2022 and held on [REDACTED], 2022. [REDACTED] days from [REDACTED], 2022, is [REDACTED], 2023. [REDACTED] days from [REDACTED], 2022, is [REDACTED], 2023. However, due to a [REDACTED] ( ) day extension granted to the Appellant and the Facility to review and submit additional exhibits, this hearing is due no later than [REDACTED], 2023, using the [REDACTED]-day language.

### **CONCLUSIONS OF LAW**

1. Conn. Gen. Stat. § 19a-535 (h) (1) 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 regulation.

Conn. Gen. Stat. § 19a-535 (a) (3) provides that a "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

**The Department has the authority under state statutes and regulations to schedule and hold nursing facility discharge hearings.**

2. Conn. Gen. Stat. § 19a-535 (b) provides in part 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 § 17b-359 or § 17b-360, or the health or safety of individuals in the facility is endangered. In each case where the welfare, health or safety of the resident is concerned the documentation shall be by the resident's physician.

Conn. Gen. Stat. § 19a-535 (a) (6) defines "emergency" as a situation in which a

failure to affect an immediate transfer or discharge of the resident that would endanger the health, safety, or welfare of the resident or other residents.

Title 42 of the Code of Federal Regulations (“C.F.R.”) § 483.15(c)(1)(i) provides the facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless – (C) The safety of individuals in the facility is endangered due to the clinical or behavioral status of the resident; (D) The health of individuals in the facility would otherwise be endangered.

42 C.F.R. § 483.15(c)(1)(ii) provides the facility may not transfer or discharge the resident while the appeal is pending, pursuant to § 431.230 of this chapter, when a resident exercises his or her right to appeal a transfer or discharge notice from the facility pursuant to § 431.220(a)(3) of this chapter unless the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility. The facility must document the danger that failure to transfer, or discharge would pose.

**The Facility correctly determined that failure to immediately and emergently effect a transfer/discharge of the Appellant would endanger the health and safety of individuals in the facility.**

3. 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 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 § 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 Facility correctly provided the Appellant and her conservator, in writing, with notification of the transfer/discharge.**

4. Conn. Gen. Stat. § 19a-535 (h) (4) provides in an emergency the notice required pursuant to subsection (c) of this section shall be provided as soon as practicable. A resident who is transferred or discharged on an emergency basis or a resident who receives notice of such a transfer or discharge may contest the action by requesting a hearing in writing not later than twenty days after the date of receipt of notice or not later than twenty days after the date of transfer or discharge, whichever is later, unless the resident demonstrates good cause for failing to request a hearing within the twenty-day period. A hearing shall be held in accordance with the requirements of this subsection not later than fifteen business days after the date of receipt of the request. The commissioner, or the commissioner's designee, shall issue a decision not later than thirty days after the date on which the hearing record is closed.

42 C.F.R. § 483.15(c)(4)(ii) provides notice must be made as soon as practicable before transfer or discharge when – (A) The safety of individuals in the facility would be endangered under paragraph (c)(1)(i)(C) of this section; (B) The health of individuals in the facility would be endangered, under paragraph (c)(1)(i)(D) of this section.

Conn. Gen. Stat. § 19a-535(k) A facility shall electronically report each involuntary transfer or discharge to the State Ombudsman, appointed pursuant to section 17a-405, (1) in a manner prescribed by the State Ombudsman, and (2) on an Internet web site portal maintained by the State Ombudsman in accordance with patient privacy provisions of the Health Insurance Portability and Accountability Act of 1996, P.L. 104- 191, as amended from time to time.

**The Facility electronically reported the involuntary transfer/discharge to the State Ombudsman portal within a practicable timeframe.**

**DECISION**

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

A handwritten signature in black ink, appearing to read 'J. Davey', is written over a horizontal line.

Joseph Davey  
Administrative Hearing Officer

Cc: [REDACTED], [REDACTED]  
Attorney [REDACTED], Appellant's Conservator

### **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 the Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue Hartford, CT 06105-9902.

### **RIGHT TO APPEAL**

The appellant has the right to appeal this decision to the 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, 165 Capitol Avenue, 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 per §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.