

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

██████████, 2023  
Signature Confirmation

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

NOTICE OF DECISION  
PARTY

██████████  
████████████████████  
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████████████████

PROCEDURAL BACKGROUND

On ██████████, 2022, ██████████ (“the “Facility) issued a Notice of Decision Not To Readmit/Notice of Emergency Discharge to ██████████ (the “Appellant”) indicating its intent to refuse her readmittance; citing as its reason that her welfare or the welfare of others would be endangered if she is allowed to return.

On ██████████, 2022, the Appellant requested an administrative hearing to contest the Facility’s proposed refusal to readmit.

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

On ██████████, 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:

Attorney ██████████, Appellant’s Conservator  
██  
██  
██  
██

[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] [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 involuntary discharge.

**STATEMENT OF THE ISSUE**

The issue is whether the Facility followed state law and federal regulation when it proposed to refuse readmittance of 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, [REDACTED] notified the Facility via phone that the Appellant was medically ready for discharge. ([REDACTED] testimony, Facility's testimony)
14. On [REDACTED], 2022, the Facility notified [REDACTED] via phone that they were starting the consultative process. (Facility's testimony, [REDACTED] testimony)
15. On or about [REDACTED], 2022, the Facility's medical director [REDACTED], [REDACTED] Chair of Psychiatry [REDACTED], and [REDACTED] Vice President of Behavioral Health [REDACTED], conducted a phone consultation regarding the Appellant's medical condition, the Facility's concerns regarding readmission, [REDACTED] concerns regarding her remaining in the hospital and what each party deemed was the appropriate course of action to meet the Appellant's nursing home care needs. (Facility's testimony, [REDACTED] testimony)
16. [REDACTED] contacted the [REDACTED] ([REDACTED]) to attempt to find alternative placement for the Appellant. ([REDACTED] testimony, Facility's testimony)
17. The Facility held a bed for the Appellant for fifteen (15) days after the emergency transfer on [REDACTED], 2022. (Facility's testimony)
18. On [REDACTED], 2022, the Facility submitted a "Notice of Decision Not to Readmit/Notice of Emergency Discharge" form to the Appellant, [REDACTED], and the Appellant's conservator at the time, [REDACTED]. (Appellant's Exhibit 3: Notice of Decision Not to Readmit/Notice of Emergency Discharge form dated [REDACTED].)
19. On [REDACTED], 2022, Attorney [REDACTED] was appointed as the Appellant's conservator. (Appellant's Exhibit 2: Certificate of Conservatorship dated [REDACTED])
20. On [REDACTED], 2022, the Facility submitted a "Notice of Decision Not to Readmit/Notice of Emergency Discharge" form to the Appellant, [REDACTED], and the Appellant's new conservator, Attorney [REDACTED]. (Appellant's Exhibit 4: Notice of Decision Not to Readmit/Notice of Emergency Discharge form dated [REDACTED].)
21. On or about [REDACTED], 2022, the Facility electronically reported its refusal to readmit the Appellant to the State Ombudsman portal. (Facility's Testimony)
22. At the time of the hearing, the Appellant remains at [REDACTED]. (Facility's testimony, [REDACTED] testimony)
23. 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 (a) (1) defines “Facility” as 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.

Conn. Gen. Stat. § 19a-535 (a) (3) defines “transfer” as 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.

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.

**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.**

2. 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 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 nonprofit entity designated by the Governor in accordance with section 46a-10b to serve as the Connecticut protection and advocacy system. 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 (e) 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 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 physician if the discharge plan was prepared by the medical director, to the resident and the resident's guardian or conservator, if any, or legally liable relative or other responsible party, if known.

Title 42 of the Code of Federal Regulations § 483.15(c)(1)(ii) provides a 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 effected the [REDACTED], 2022, emergency transfer of the Appellant to [REDACTED] pursuant to state statute and federal regulation.**

**The Facility correctly determined that no discharge plan was required under state statute.**

3. Conn. Gen. Stat. § 19a-537 (c) provides a nursing home shall reserve, for at least fifteen days, the bed of a resident who is a recipient of medical assistance and who is absent from such home due to hospitalization unless the nursing home documents that it has objective information from the hospital confirming that the resident will not return to the nursing home within fifteen days of the hospital admission including the day of hospitalization.

Conn. Gen. Stat. § 19a-537 (g) provides that whenever a nursing home has concerns about the readmission of a resident, as required by subsection (e) of this section, based on whether the nursing home has the ability to meet the resident's care needs or the resident presents a danger to himself or herself or to other persons, not later than twenty-four hours after receipt of notification from a hospital that a resident is medically ready for discharge, a nursing home shall request a consultation with the hospital and the resident or the resident's representative. The purpose of the consultation shall be to develop an appropriate care plan to safely meet the resident's nursing home care needs, including a determination of the date for readmission that best meets such needs. The resident's wishes and the hospital's recommendations shall be considered as part of the consultation process. The nursing home shall reserve the resident's bed until completion of the consultation process. The consultation process shall begin as soon as practicable and shall be completed not later than three business days after the date of the nursing home's request for a consultation. The hospital shall participate in the consultation, grant the nursing home access to the resident in the hospital and permit the nursing home to review the resident's hospital records.

**The Facility correctly reserved a bed for the Appellant for fifteen (15) days following her emergency transfer to [REDACTED].**

**The Facility properly requested a consultation within twenty-four (24) hours of being notified that the Appellant was medically ready for discharge from [REDACTED].**

**The Facility met all the requirements of Conn. Gen. Stat. § 19a-537(g) regarding the consultative process.**

4. Conn. Gen. Stat. § 19a-537 (h) provides a nursing home shall not refuse to readmit a resident unless: (1) The resident's needs cannot be met in the facility; (2) the resident no longer needs the services of the nursing home due to improved health; or (3) the health and safety of individuals in the nursing home would be endangered by readmission of the resident. If a nursing home decides to refuse to readmit a resident either without requesting a consultation or following a consultation conducted in accordance with subsection (g) of this section, the nursing home shall, not later than twenty-four hours after making such decision, notify the hospital, the resident and the resident's guardian or conservator, if any, the resident's legally liable relative or other responsible party, if known, in writing of the following: (A) The determination to refuse to readmit the resident; (B) the reasons for the refusal to

readmit the resident; (C) the resident's right to appeal the decision to refuse to readmit the resident; (D) the procedures for initiating such an appeal, as determined by the Commissioner of Social Services; (E) the resident has twenty days from the date of receipt of the notice from the facility to initiate an appeal; (F) the possibility of an extension of the time frame for initiating an appeal for good cause; (G) the contact information, including the name, mailing address and telephone number, for the Long-Term Care Ombudsman; and (H) the resident's right to represent himself or herself at the appeal hearing or to be represented by legal counsel, a relative, a friend or other spokesperson. If a resident is, or the nursing home alleges a resident is, mentally ill or developmentally disabled, the nursing home shall include in the notice to the resident the contact information, including the name, mailing address and telephone number of the nonprofit entity designated by the Governor in accordance with section 46a-10b, to serve as the Connecticut protection and advocacy system. The Commissioner of Social Services, or the commissioner's designee, shall hold a hearing in accordance with chapter 54 to determine whether the nursing home has violated the provisions of this section. The commissioner, or the commissioner's designee, shall convene such hearing not later than fifteen 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. The commissioner, or the commissioner's designee, may require the nursing home to readmit the resident to a semiprivate room or a private room, if a private room is medically necessary. The Superior Court shall consider an appeal from a decision of the commissioner pursuant to this section as a privileged case to dispose of the case with the least possible delay.

**The Facility established by a preponderance of the evidence that the Appellant would present a danger to the health and safety of individuals within the Facility if she were to be readmitted.**

**The Facility properly notified the Appellant, her conservator, [REDACTED], and the Long-Term Care Ombudsman of their refusal to readmit the Appellant. The notice properly outlined the reason for the refusal as well as the Appellant's right to appeal the Facility's decision. Contact information, including the name, mailing address, and telephone number of the Long-Term Care Ombudsman and Disability Rights Connecticut was properly listed on the notice.**

**The Facility's refusal to readmit the Appellant is in accordance with state statute and federal regulation.**



## DISCUSSION

During the hearing, Attorney [REDACTED] (counsel for [REDACTED]) argued that the Facility's failure to readmit the Appellant was improper because they did not follow the consultative process as outlined in Conn. Gen. Stat. § 19a-537 (g). She asserted that "the intent and purpose of the statute was not followed" and there was no "good faith collaboration" on the part of the Facility as the "decision to refuse (to readmit the Appellant) had effectively already been made." I find that the Facility's [REDACTED], 2022, phone call notifying [REDACTED] that the consultative process had begun, and the phone call on or about [REDACTED], 2022, between the Facility's doctor ([REDACTED]) and [REDACTED] doctor ([REDACTED]) satisfied the requirements of Conn. Gen. Stat § 19a-537 (g) regarding the consultative process. Further, I find that the Facility was correct in asserting that the Appellant's behavior presents a danger to the other residents of the Facility. As established by the hearing record, the Facility had discharged and readmitted the Appellant for behavioral issues numerous times over nearly [REDACTED]. It was only after the Appellant's behavior became physically violent and she began threatening to kill other residents that the Facility made the decision to refuse readmittance. The Facility adequately documented the escalating behavior of the Appellant and clearly established that the Appellant's readmission to the Facility would present a danger to the other residents.

## DECISION

The Appellant's appeal is DENIED.

  
Joseph Davey  
Administrative Hearing Officer

Cc: [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.