

**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

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

PROCEDURAL BACKGROUND

On ██████████, 2023, ██████████ ██████████ (the "Facility") issued a Notice of Transfer/Discharge to ██████████ (the "Appellant") indicating its intent to discharge the Appellant, citing as its reason for discharge that "your health has improved so that you no longer need the services provided by the facility."

On ██████████, 2023, the Appellant requested an administrative hearing to contest the Facility's proposed discharge.

On ██████████, 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling an administrative hearing for ██████████, 2023.

On ██████████, 2023, the Appellant requested that the administrative hearing be rescheduled.

On ██████████, 2023, the OLCRAH issued a notice rescheduling the administrative hearing for ██████████, 2023.

On ██████████, 2023, the Appellant requested that the administrative hearing be rescheduled.

On ██████████, 2023, the OLCRAH issued a notice rescheduling the administrative hearing for ██████████, 2023.

On [REDACTED], 2023, 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
[REDACTED], Facility Administrator, [REDACTED]
[REDACTED], Facility Social Worker, [REDACTED]
[REDACTED], State Long Term Care Ombudsman
Joseph Davey, Administrative Hearing Officer

At the Appellant's request, the hearing record remained open on [REDACTED], 2023, for the submission of additional information from himself and the Facility. Information was submitted by both parties and the hearing record closed on [REDACTED], 2023.

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], 2022, the Appellant was admitted to the Facility for alcohol dependence with referral (unspecified), primary hypertension, and an unspecified fall. (Facility's testimony).
2. The Appellant received a sixty (60) day short-term approval from Maximus, the Department of Social Services contractor that administers approval of nursing home care. The approval expired sixty (60) days from the date of the Appellant's admission. (Facility's testimony)
3. The Appellant has additional medical issues including left shoulder pain, left hip pain, and sinusitis. (Exhibit B: [REDACTED] Visit overview dated [REDACTED], Exhibit E: [REDACTED] Progress Notes dated [REDACTED], Exhibit F: [REDACTED] Progress Notes dated [REDACTED], Exhibit H: Text Screenshots of test results, Exhibit G: [REDACTED] test results dated [REDACTED], Appellant's testimony)
4. The Appellant is [REDACTED] ([REDACTED]) years old [DOB 1 [REDACTED]]. (Appellant's testimony)
5. The Appellant is currently active on Medicaid. (Facility's testimony, Appellant's testimony)

6. The Appellant is working with the CT Money Follows the Person (“MFP”) program to obtain an alternative residence. (Facility’s testimony, Appellant’s testimony)
7. On ██████, 2022, due to the expiration of the Appellant’s sixty (60) day short-term approval, the Facility reapplied for long-term care approval for the Appellant through Maximus. (Facility’s testimony)
8. On ██████, 2022, Maximus determined that nursing home level of care was not medically necessary for the Appellant. (Facility’s Exhibit 1: Notice of Transfer/Discharge, Facility’s testimony)
9. On ██████, 2022, an appeal was filed to contest Maximus’ decision to deny nursing home level of care. Maximus denied the appeal. (Facility’s testimony)
10. As of the date of the hearing, the Appellant is independent with all of his Activities of Daily Living (“ADL’s”). (Facility’s testimony)
11. On ██████, 2023, the Facility issued the Appellant a Notice of Transfer/Discharge which listed a proposed discharge date of ██████, 2023, with the following reason for discharge: “Your health has improved so that you no longer need the services provided by the facility.” The Notice further stated that “On ██████, 2022, Maximus, a company contracted by the CT Department of Social Services determined that nursing facility level of care is not medically necessary for you at this time.” (Facility’s Exhibit 1)
12. The ██████, 2023, Notice of Transfer/Discharge contained a discharge plan which was developed with the Facility’s Medical Director in conjunction with the Director of Nursing, Discharge Planner and Facility Administrator. The discharge plan considered the feasibility of placement of the Appellant near relatives, the acceptability of the placement to the Appellant, an evaluation of the effects (medical, social and/or psychological) of the discharge on the Appellant and the measures taken to minimize such effects, and an outline of the care and services the Appellant would receive upon discharge. (Facility’s Exhibit 1)
13. The ██████, 2023, Notice of Transfer/Discharge contained appeal rights for the discharge, as well as the name, mailing address, telephone number, fax number and email address for both the State Long Term Care Ombudsman and Disability Rights CT, Inc. (Facility Exhibit 1)
14. The ██████, 2023, Notice of Transfer/Discharge indicated that the Appellant would be discharged to ██████ of ██████, located in ██████, ██████. (Facility’s Exhibit 1, Facility’s testimony)
15. The Appellant’s sister resides in ██████, ██████ but is unable to house the Appellant. (Appellant’s testimony)

16. On [REDACTED], 2023, the Facility electronically reported the Appellant's involuntary transfer/discharge to the State Ombudsman portal. (Facility's Exhibit 1, State Long Term Care Ombudsman's testimony)
17. On [REDACTED], 2023, the Appellant visited [REDACTED] Hospital Ear Nose and Throat to receive testing for acute ethmoidal sinusitis (recurring). The test results displayed light growth of Staphylococcus aureus. The Appellant was prescribed Oxacillin to treat the condition. (Exhibit G)
18. The MFP program obtained an apartment for the Appellant in [REDACTED] 2023. The apartment was located on [REDACTED] in [REDACTED], [REDACTED]. The Appellant refused placement in the Apartment citing that it was a dangerous area he was not comfortable with. (Appellant's testimony, Facility's testimony)
19. On [REDACTED], 2023, the Appellant received a fluoroscopically-guided left hip injection with anesthetic and steroid to address his left hip pain. (Exhibit H)
20. On [REDACTED], 2023, the Appellant received a CT scan. (Exhibit E)
21. On [REDACTED], 2023, the Appellant visited [REDACTED] Hospital Ear Nose and Throat to address acute ethmoidal sinusitis (recurring) and go over his CT scan results. The CT scan displayed "right-sided maxillary ethmoid and frontal disease with erosive changes of the ethmoid." The Appellant was referred to [REDACTED] for surgical consultation. (Exhibit E)
22. On [REDACTED], 2023, the Appellant visited the [REDACTED] [REDACTED] for shortness of breath. (Exhibit F)
23. At the time of the hearing record closing, the Appellant remains at the Facility. (Hearing Record)

CONCLUSIONS OF LAW

1. Connecticut General Statutes ("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) (4) provides that a "discharge" means the movement of a resident from a facility to a noninstitutional setting.

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.

Title 42 of the Code of Federal Regulations ("C.F.R.") § 483.15(c)(1)(i)(B) provides the facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless – (B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.

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 the Appellant's health has improved sufficiently so that he no longer needs the services provided by the Facility.

The Facility correctly allowed the Appellant to remain at the Facility while his appeal is pending.

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, in writing, with notification of the transfer/discharge.

4. 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, physician assistant 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 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, physician assistant or advanced practice registered nurse 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.

The Facility correctly provided the Appellant with a discharge plan as outlined in statute.

5. 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.

DISCUSSION

During the administrative hearing, the Appellant testified that he should remain in the Facility because of his existing medical problems and possible upcoming sinus surgery. In addition, he expressed concern about the Facility discharging him to [REDACTED].

The State Long Term Care Ombudsman also raised concern about [REDACTED] as a discharge location. She asserted that as of [REDACTED], 2023, the day of the administrative hearing, there were no available beds at [REDACTED]. However, the Facility clarified that on [REDACTED], 2023, when the notice of discharge was given to the Appellant, beds were available. The Facility further explained that should the Appellant's discharge be upheld; they would revisit the discharge location and only discharge the Appellant to a location with available beds.

In consideration of the Appellant's appeal, it should be noted that the scope of this administrative hearing is limited to whether the Facility's proposed discharge of the Appellant, of which he was notified on [REDACTED], 2023, and which was scheduled for [REDACTED], 2023, was in compliance with state statute and federal regulations. It is within this scope that the undersigned finds that the Facility correctly conducted all aspects of the Appellant's proposed discharge.

However, the undersigned also acknowledges the Appellant's concerns regarding his possible surgery and other health issues. The Appellant is encouraged to submit any and all medical information to Maximus so that his condition may be reevaluated.

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], Facility Administrator, [REDACTED]
[REDACTED], State Long Term Care 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, 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.