

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

██████████
██████████
REQUEST# 213865

NOTICE OF DECISION

PARTY

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

John Horstman, Administrator
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██████████
██████████

PROCEDURAL BACKGROUND

On ██████████, 2023, Civita Care Center of Cheshire (the "Facility") issued a Notice of Discharge to ██████████ ██████████ (the "Appellant") indicating its intent to involuntarily discharge the Appellant within thirty (30) days, citing its reason for discharge that she no longer requires the services of the Facility due to improved health.

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 the administrative hearing at Civita Care Center of Cheshire for ██████████, 2023.

On ██████████, 2023, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing to address the Facility's intent to discharge the Appellant. The following individuals participated in the hearing:

██████████, Appellant
John Horstman, Facility Administrator
Lauren Wiganowske, Director of Social Services, ██████████

Josephine Sanseverino, Regional Social Worker
Melissa Prisavage, Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the Facility acted in accordance with state laws and federal regulations when it proposed to involuntarily discharge the Appellant.

FINDINGS OF FACT

1. On [REDACTED], 2021, the Appellant was admitted to the facility for rehabilitative services following a hospitalization for a coagulation deficit. (Facility's Testimony)
2. The Appellant is [REDACTED]-years-old [DOB [REDACTED] [REDACTED] [REDACTED]]. (Appellant's Testimony)
3. The Appellant no longer meets the criteria for nursing facility level of care per administrative hearing decision last year. (Appellant's Testimony, Facility's Testimony)
4. The Appellant has been discharged from all therapies. (Facility's Testimony)
5. As of the date of this hearing, the Appellant remains independent in all of her Activities of Daily Living ("ADLs"). (Facility's Testimony)
6. On [REDACTED], 2023, the Facility issued a Notice of Discharge to the Appellant. The notice stated that the Appellant would be discharged from the Facility on [REDACTED], 2023, due to improved health, and that she no longer required the care and services of a skilled nursing facility. The notice indicated that the Appellant would be discharged to [REDACTED] in [REDACTED], CT. In addition, the notice listed all the required information regarding the appeals process. (Exhibit B: Notice of Discharge)
7. On [REDACTED], 2023, an Addendum to Notice of Discharge was attached to the Notice of Discharge and issued to the Appellant. The Addendum was signed by the Appellant's Attending Physician and Social Worker. (Exhibit C: Addendum to Notice of Discharge)
8. The Facility's Addendum to Notice of Discharge contained a partially written assessment of the effects of the discharge and proposed steps to minimize disruptions. (Exhibit C)

9. The Facility's Addendum to Notice of Discharge stated that supports will be set up in the community, but these have not been provided as of the administrative hearing date. (Facility's Testimony, Appellant's Testimony, Hearing Record)
10. The Facility has not developed a discharge plan signed by the medical director or the Appellant's physician. (Hearing Record)
11. The Facility is still in the process of determining a suitable location to which the Appellant can be discharged. (Facility's Testimony)
12. 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], 2023 is [REDACTED], 2023, and thirty days from [REDACTED], 2023 is [REDACTED], 2023. Therefore, this hearing decision is due not later than [REDACTED], 2023, and is therefore timely. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 19a-535(h)(1) of the Connecticut General Statutes ("Conn. Gen. Stat.") provides upon receipt of a request for a hearing to appeal any proposed transfer or discharge, the Commissioner of Social Services or the commissioner's designee shall hold a hearing to determine whether the transfer or discharge is being affected in accordance with this section.
2. Conn. Gen. Stat. § 19a-535(a)(4) defines "discharge" as 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.

3. Conn. Gen. Stat. §19a-535(b) 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.

4. Title 42 of the Code of Federal Regulations (“CFR”) § 483.15(c)(1)(i)(B) provides that the facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless 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.

The Facility correctly determined that the Appellant no longer needs the services of the skilled nursing facility due to improved health, based upon completion of a medical review.

5. 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 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 a discharge notice 30 days prior to the proposed discharge date. The notice included the effective date of the discharge, the reason for the discharge, a location to which the Appellant would be discharged to, the State of Connecticut Ombudsman information, and their appeal rights.

6. 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 relative's, 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 and the resident's guardian or conservator, if any, or legally liable relative or other responsible party, if known.

The Facility's Addendum to Notice of Discharge does not comply with state statutes. The Facility failed to provide a discharge plan to the Appellant that includes relevant factors that affect her adjustment to the move, a written evaluation of the effects of the discharge, the care and kinds of services which the resident shall receive upon discharge, and a statement of actions taken to minimize such effects.

DECISION

The Appellant's appeal is **GRANTED**

ORDER

1. The Facility is ordered to rescind its proposal to involuntarily discharge the Appellant from its care.
2. Proof of compliance with this order is due back to the undersigned hearing officer no later than [REDACTED], 2023.

Melissa Prisavage

**Melissa Prisavage
Fair Hearing Officer**

CC: Daniel Beem, 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.

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, 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 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.