

**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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██████████
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PROCEDURAL BACKGROUND

On ██████████, 2023, ██████████ (“the “Facility”) issued a Notice of Emergency Transfer To A Hospital to ██████████ (the “Appellant”) indicating its intent to emergently discharge the Appellant, citing as its reason for discharge that she required care in a hospital.

On ██████████, 2023, the Appellant requested an administrative hearing to contest the Facility’s inferred refusal to readmit her to the Facility.

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

On ██████████, 2023, in accordance with Connecticut General Statutes, §§ 19a-535 and 4-176e to 4-184, inclusive, the OLCRAH held an administrative hearing. The following individuals participated in the hearing:

- ██████████, Appellant
- Attorney ██████████, ██████████, Counsel for ██████████
- ██████████
- ██████████, Facility Administrator, ██████████
- ██████████, Director of Admissions, ██████████
- ██████████, Director of Social Services, ██████████
- Joseph Davey, Administrative Hearing Officer

The hearing record remained open for the submission of additional information by [REDACTED] and the Appellant. Information was submitted by both parties and the hearing record closed on [REDACTED], 2023.

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 inferred it would refuse readmittance of the Appellant.

FINDINGS OF FACT

1. On [REDACTED], 2023, the Appellant was admitted to the Facility for short-term rehabilitation with a principal diagnosis of cellulitis Ile. (Facility's Exhibit 6: Information Received from [REDACTED] upon Appellant's admission to [REDACTED] dated [REDACTED], Facility's testimony)
2. The Appellant's stay in the Facility was paid for through her managed Medicare plan via [REDACTED]. (Facility's testimony)
3. The Appellant is active on the Qualified Medicare Beneficiaries ("QMB") program but does not receive full Medicaid benefits. (Appellant's testimony, Facility's testimony)
4. The Appellant's medical history includes a diagnosis of COPD, lymphedema, lipedema, and diabetes. (Facility's Exhibit 6, Facility's testimony)
5. On [REDACTED], 2023, the Appellant signed a "Financial Acknowledgements and Consent" form at the Facility which stated in relevant part: "I do not request that the facility reserve a bed for me during my absence from the facility due to hospitalization...If I have chosen not to reserve a bed, I understand that readmission to the facility cannot be guaranteed on the date of discharge from the hospital." In addition, the Appellant was given a "Notice Regarding Reservation of the Resident's Bed if the Resident is Hospitalized." The notice stated in relevant part that "If the resident's bed is not reserved, when the resident is ready to be discharged from the hospital, the facility will readmit the resident to the first semi-private bed that becomes available (or to the first private room that becomes available if a private room is medically necessary). The facility cannot guarantee that a bed will be available at the time the resident needs to be discharged from the hospital". (Facility's Exhibit 2: Financial Acknowledgements and Consent form dated [REDACTED], Facility's Exhibit 3: Notice Regarding Reservation of the Resident's Bed if the Resident is Hospitalized)

6. After the Appellant was admitted, the Facility determined a bariatric bed was necessary for the Appellant's treatment and rented one from a third party. (Facility's testimony)
7. The Facility provided physical and occupational therapy for the Appellant as part of her treatment. (Facility's testimony)
8. On [REDACTED], 2023, the Facility transferred the Appellant to [REDACTED] (the "Hospital") for difficulty breathing and increased weight gain in her abdomen and legs that the Facility had concerns may be linked to heart problems. (Facility's Exhibit 10: [REDACTED] APRN's Clinical Notes concerning the Emergency Transfer to [REDACTED] on [REDACTED], Facility's testimony, Appellant's testimony)
9. On [REDACTED], 2023, the Appellant and the Hospital were provided with a "Notice of Emergency Transfer to a Hospital" form which outlined that the Appellant's transfer to the Hospital was made because "your welfare or the welfare of others in the facility will be endangered if we do not make this transfer immediately." (Facility's Exhibit 4: Notice of Emergency Transfer to a Hospital form dated [REDACTED])
10. The Appellant is not disputing the [REDACTED], 2023, transfer from the Facility to the Hospital. (Appellant's testimony)
11. The Appellant received care in the Hospital from [REDACTED], 2023, until [REDACTED], 2023. (Hearing Record)
12. On [REDACTED], 2023, a case manager at the Hospital called the Facility to discuss the Appellant's discharge from the Hospital. During the call, the Hospital inquired about the Appellant returning to the Facility. The Facility relayed that the bariatric bed which had been rented for the Appellant was returned upon her admission to the Hospital. The Facility expressed that they considered the bariatric bed necessary for the Appellant's treatment and that it was not currently in place at the Facility. The Hospital then mentioned that the Appellant may return home with services and asked if the Facility could hold the Appellant's belongings until she could arrange for their pickup. (Exhibit 9: Affidavit of [REDACTED] dated [REDACTED], Facility's testimony)
13. On [REDACTED], 2023, the Hospital spoke with the Appellant and informed her that Facility was unable to readmit her. The Hospital did not give an explanation as to why the Facility was refusing readmittance. (Appellant's testimony)
14. On [REDACTED], 2023, the Appellant called the Facility and was told that they could not readmit her at that time due to the lack of a bariatric bed. (Facility's testimony, Appellant's testimony)
15. On [REDACTED], 2023, the Hospital discharged the Appellant back to her home with home-care services. (Hearing Record)

16. On [REDACTED], 2023, the Hospital sent an electronic report to the Facility which confirmed the Appellant had been discharged. The electronic report outlined that the Appellant had declined placement in other skilled nursing facilities and had elected to return home with services. (Facility's testimony)
17. The Facility did not issue the Appellant a "Notice of Decision Not to Readmit" because they were informed by the Hospital via the electronic report that the Appellant was discharged home with home-care services. (Facility's testimony)
18. On [REDACTED], 2023, the Appellant submitted an email to the OLCRAH requesting an administrative hearing regarding the Facility declining to readmit her. The Appellant did not contact the Facility regarding readmission after her discharge from the Hospital. (Appellant's Exhibit A: Email to the OLCRAH dated [REDACTED], Appellant's testimony)
19. On [REDACTED], 2023, the Facility received a copy of the Notice of Administrative Hearing and attempted to contact the Appellant via phone regarding readmission. The Facility was unsuccessful in reaching the Appellant. The Facility attempted to contact the Appellant a further three times via phone on [REDACTED], 2023, [REDACTED], 2023, and [REDACTED], 2023. All attempts on said dates were unsuccessful. (Facility's testimony)
20. On [REDACTED], 2023, the Facility mailed the Appellant a letter requesting that she contact the Facility to discuss and resolve the matter of her readmission. (Facility's Exhibit 5: Letter from Facility to Appellant dated [REDACTED].)
21. On [REDACTED], 2023, the Facility successfully contacted the Appellant via phone and spoke with her regarding readmission to the Facility. The Facility explained to the Appellant that if she believed she required inpatient skilled nursing services, she could go through the referral process required by her insurance provider to be readmitted to the Facility. (Facility's testimony)
22. On [REDACTED], 2023, the Facility electronically reported the Appellant's transfer/discharge to the State Ombudsman portal. (Facility's Exhibit 8: Confirmation of submission of the [REDACTED] Notice of Emergency Transfer to a Hospital to the Office of Long-Term Care Ombudsman's Portal)
23. At the time of the administrative hearing, the Appellant remains at home with home-care services. (Hearing Record)

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 of the Appellant to the Hospital would endanger her health and welfare.

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 ██████████, 2023, emergency transfer of the Appellant to the Hospital 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-535 (a)(5) defines a "self-pay resident" as a resident who is not receiving state or municipal assistance to pay for the cost of care at a facility, but shall not include a resident who has filed an application with the Department of Social Services for Medicaid coverage for facility care but has not received an eligibility determination from the department on such application, provided the resident has timely responded to requests by the department for information that is necessary to make such determination.

Conn. Gen. Stat. § 19a-537 (b)(1)(2) provides that a nursing home shall: (1) Reserve the bed of a self-pay resident of such facility who is absent from the facility due to hospitalization whenever payment is available to reserve the bed;(2) Inform the self-pay resident and such resident's relatives or other responsible persons, upon admission of a person to the facility and upon transfer of a resident to a hospital, that the bed of a resident will be reserved as long as payment is available to the facility to reserve the bed and that if payment is not made, the resident will be admitted to the next available bed in accordance with subsection (e) of this section.

The Facility correctly determined that the Appellant is a self-pay resident as defined under Conn. Gen. Stat § 19a-535 (a)(5).

The Facility correctly informed the Appellant that a bed will be reserved upon transfer to a hospital as long as payment is made available to the Facility.

The Facility was not required to reserve a bed for the Appellant as she attested in writing she did not want to reserve a bed and make payment available should she be hospitalized.

4. Conn. Gen. Stat § 19a-537 (e)(1)(2) provides that if a resident's hospitalization exceeds the period of time that a nursing home is required to reserve the resident's bed or the nursing home is not required to reserve the resident's bed under this section, the nursing home: (1) Shall, upon receipt of notification from the hospital that a resident is medically ready for discharge, provide the resident with the first bed available in a semiprivate room or a private room, if a private room is medically necessary; (2) Shall grant the resident priority of admission over applicants for first admission to the nursing home.

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 was not required to request a consultation with the Hospital as the Appellant elected to be discharged from the Hospital to her home with home-care services within twenty-four (24) hours of the Facility being notified that the Appellant was medically ready for discharge.

5. 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 was not required to issue the Appellant a notice of refusal to readmit as the Appellant elected to be discharged from the Hospital to her home with home-care services within twenty-four (24) hours of the Facility being notified that the Appellant was medically ready for discharge.

DISCUSSION

During the hearing, the Appellant contended that the Facility's assertion that she could not be readmitted due to the lack of a bariatric bed was incorrect. She presented the argument that although the Facility had returned the bariatric bed it had rented for her, it had other open beds and should have allowed her to return. In her argument, she raised the point that the Facility had initially accepted her without having a bariatric bed and it was only after roughly one week that a bariatric bed was brought in for her.

The Facility testified that they considered the bariatric bed a necessary part of the Appellant's treatment, and that it was not available because the Appellant had signed paperwork indicating she did not want a bed held for her in the event of her hospitalization. The Facility then presented their argument that the Hospital had informed them that the Appellant was likely going to return home with services, and they did not pursue readmitting the Appellant as the Hospital confirmed later in the same day that she had been discharged home with services. The Facility expressed that it was their belief that the Appellant had voluntarily chosen to return home with services, and that they were unaware she still had intentions to return to the Facility until they received the Notice of Administrative Hearing.

Under state statute, even if the Appellant declined a bed hold, the nursing home would be required "upon receipt of notification from the hospital that a resident is medically ready for discharge, provide the resident with the first bed available in a semiprivate room or a private room, if a private room is medically necessary." However, state statute only requires that the Facility request a consultation with a hospital "not later than twenty-four hours after receipt of notification from a hospital that a resident is medically ready for discharge." The twenty-four (24) hour standard also applies to written notification regarding the Facility's refusal to readmit. The Appellant left within twenty-four (24) hours of the Facility receiving notification from the Hospital that she was medically ready for discharge, which removed the Facility's obligations to consult with the Hospital and provide written justification/notification to the Appellant explaining their refusal to readmit her.

The undersigned finds the Facility's testimony that they were unaware of the Appellant's continued intention to return to be credible and that their actions complied with state statute regarding readmission. The Facility stated numerous times during the hearing that they would accept the Appellant back should she complete the referral process required by her insurer and still require a skilled nursing level of care. The Appellant is urged to work with the Facility and her insurer if she still believes she requires readmittance to the Facility.

DECISION

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



Joseph Davey
Administrative Hearing Officer

CC: [REDACTED], Facility Administrator, [REDACTED]

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.