

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

Signature Confirmation

Case # [REDACTED]
Client ID # [REDACTED]
Request # 234346

NOTICE OF DECISION

PARTY

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

PROCEDURAL BACKGROUND

On [REDACTED], [REDACTED], (the "facility") delivered a Notice of Discharge to [REDACTED] (the "Appellant"), informing him of their intention to discharge the Appellant from their care on [REDACTED], to [REDACTED] located at [REDACTED]. The reason for the discharge is that the Appellant no longer require daily, in-patient, skilled nursing services from the facility.

On [REDACTED], the Appellant requested an administrative hearing to contest the facility's proposed action to discharge the Appellant from its facility.

On [REDACTED], the Office of Legal Counsel, Regulations, and Administrative Hearings ("OLCRAH") issued a notice scheduling the administrative hearing for [REDACTED]

On [REDACTED], in accordance with sections 19a-535 and 4-176e to 4-189 inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing. The following individuals were present at the hearing.

[REDACTED] Appellant
[REDACTED] Conservator
[REDACTED], Conservator's Paralegal
[REDACTED], Facility Social Worker
[REDACTED] Administrator
[REDACTED] Business Officer Manager

██████████ Corporate Legal Assistant
 ██████████ Attorney for Nursing Home
 Shawn P Hardy, Fair Hearing Officer

STATEMENT OF THE ISSUE

The issue to be decided is whether the facility complied with the statutory requirements for an involuntary discharge of a patient when the facility proposed to discharge the Appellant from their care on ██████████.

FINDINGS OF FACT

1. On ██████████, ██████████ (the "Facility") admitted the Appellant with a diagnosis of anxiety, urinary tract infection, hypertension, and fusion of spine. (Hearing Record, Exhibit B: Notice of Decision ██████████)
2. The Appellant is ██████ years old (DOB: ██████████). (Hearing Record, Appellant's Testimony)
3. The Appellant no longer meets the criteria for nursing facility level of care, the Appellant is independent with all Activities of Daily Living (ADL). (Exhibit 1: Notice of Discharge ██████████, Social Worker's Testimony, Hearing record)
4. The Appellant uses a walker and a wheelchair due to mobility issues. (Appellant's Testimony)
5. There are no medications currently being taken by the Appellant. (Conservator's Testimony, Appellant's Testimony)
6. The Appellant has organic food delivered to the facility through a service called "Instacart". (Appellant's Testimony)
7. On ██████████, the facility completed a discharge plan. (Exhibit 1)
8. On ██████████ ██████████ the facility issued the Appellant a Notice of Discharge. The facility informed the Appellant of their intent to discharge him on ██████████, to ██████████ located at ██████████., ██████████. The reason for the discharge is that you no longer require daily, in-patient, skilled nursing services from the facility. (Exhibit 1)

9. The Appellant doesn't want to be discharged to [REDACTED] he likes to do artwork and photography and feels moving to a [REDACTED] would psychologically work against his creativity. (Appellant's Testimony)
10. The Appellant's monthly income of \$1,025.00 per month would not be enough to allow him to stay at [REDACTED] Conservator's Testimony)
11. [REDACTED] charges between \$66 - \$83 a day. (Conservator's Testimony)
12. The facility will pay for two weeks stay at [REDACTED] (Attorney's Testimony)
13. In the event the Appellant has any medical, social, or psychological effects due to the discharge, the facility Social Worker will request social work services from the visiting nursing agency. (Exhibit 1)
14. The Appellant owes over \$150,000.00 to [REDACTED] for room and board and ancillaries. (Attorney's statement)
15. The Conservator found a Residential Care Home (RCH), in [REDACTED] but it has stairs and was not handicapped accessible. (Conservator's Testimony)
16. The Appellant has family members (brothers) that live in [REDACTED] but are not offering to assist with care when he is discharged from the facility. (Appellant's Testimony)
17. Since [REDACTED] the Conservator has been unsuccessful in finding housing for the Appellant. (Conservator's Testimony)
18. On [REDACTED], the facility electronically reported the Appellant's involuntary discharge to the Internet web site portal maintained by the State Ombudsman. (Exhibit 1)
19. 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], is [REDACTED], and thirty days from [REDACTED], is [REDACTED]. Therefore, this hearing decision is due not later than [REDACTED] [REDACTED], and is therefore timely. (Hearing Record)

CONCLUSIONS OF LAW

1. Section 19a-535(a) of the Connecticut General Statutes ("Conn. Gen. Stat.") provides as follows:

For the purposes of this section: (1) "Facility" means 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; (2) "continuing care facility which guarantees life care for its residents" has the same meaning as provided in section 17b-354; (3) "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; (4) "discharge" means the movement of a resident from a facility to a noninstitutional setting; (5) "self-pay resident" means 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; and (6) "emergency" means a situation in which a failure to effect an immediate transfer or discharge of the resident that would endanger the health, safety or welfare of the resident or other residents.

Conn. Gen. Stats. § 19a-535(a)

2. State statute provides as follows:

No resident shall be transferred or discharged from any facility as a result of a change in the resident's status from self-pay or Medicare to Medicaid provided the facility offers services to both categories of residents. Any such resident who wishes to be transferred to another facility that has agreed to accept the resident may do so upon giving at least fifteen days written notice to the administrator of the facility from which the resident is to be transferred and a copy thereof to the appropriate advocate of such resident. The resident's advocate may help the resident complete all administrative procedures relating to a transfer.

Conn. Gen. Stat. § 19a-535(d)

3. State statute provides as follows:

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 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, a physician assistant, or an advanced practice registered nurse. In each case where the welfare, health or safety of the resident is concerned the documentation shall be by the resident's physician, physician assistant or advanced practice registered nurse. A facility that 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 that 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 that 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.

Conn. Gen. Stats. § 19a-535(b)

The facility correctly determined the Appellant no longer needs the services of the facility because the Appellant is independent in his care at the facility due to improved health.

4. State statute provides as follows:

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(c)(1)

The facility properly issued a notice of discharge to the Appellant. The facility gave the Appellant at least 30 days' notice of the proposed date and location of the discharge pursuant to the requirements of section 19a-535(c) of the Connecticut General Statutes.

5. State statute provides as follows:

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.

2022 Supplement Conn. Gen. Stat. 19a-535(e)

“The facility shall be responsible for assisting the resident in finding an appropriate placement.” 2022 Supplement Conn. Gen. Stat. 19a-535(g)

The facility has met the statutory requirement of formulating a discharge plan to include a written evaluation of the effects of the transfer or discharge on the resident, a statement of action taken to minimize such effects, and an outline of care and services which the resident would receive upon discharge.

6. State statute provides as follows:

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.

Conn. Gen. Stat. § 19a-535(k)

The facility correctly reported its proposal to involuntary transfer the Appellant from their facility to [REDACTED], [REDACTED], [REDACTED], on the Internet web site portal maintained by the State Ombudsman, the facility met the statutory requirements of formulating a written discharge plan under Conn. Gen. Stat. § 19a-535(e).

DECISION

The Appellant’s appeal is **DENIED**.

Shawn P. Hardy

Shawn P. Hardy
Hearing Officer

CC:

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

[REDACTED]
[REDACTED]
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[REDACTED]
[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 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 Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Ave., 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, 55 Elm Street, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Ave., 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 his 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.