

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178211
Decision Date:	11/23/2021	Hearing Date:	November 4, 2021
Hearing Officer:	Stanley M. Kallianidis	Record Open Date:	November 11, 2021

Appellant Representative:

Pro Se

Facility Representative:



***Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171***

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Safety of Individuals in Facility
Decision Date:	11/23/2021	Hearing Date:	November 4, 2021
Appellant Rep:	Pro Se	Facility Rep:	

Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

In a notice dated October 26, 2021, the respondent nursing home (herein after "facility") planned on discharging the appellant because, "The safety of individuals in the nursing facility is endangered" (Exhibit 1). The appellant filed this appeal in a timely manner on October 27, 2021 (see 130 CMR 610.015 and Exhibit 2). A nursing facility initiated-discharge is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by the Facility

The facility plans on discharging the appellant because he is endangering the safety of individuals in the facility.

Issue

Is the appellant endangering the safety of individuals in the facility pursuant to 130 CMR 610.028?

Summary of Evidence

A representative from Highview of Northampton testified that the appellant is a 42-year-old male admitted to their facility on July 20, 2021. His admitting diagnoses included sepsis and staff infection. He has a history of left leg amputation below knee, substance abuse, opioid dependence, diabetes, hepatitis C, and post-traumatic stress disorder. He is independent with activities of daily living and is able to ambulate on his own (Exhibit 3).

The facility is planning his discharge because he is endangering the safety of individuals in the facility due to his use of illicit drugs. The facility representative explained that the appellant was found in his room on October 26, 2021 breathing with difficulty and slurring his words. He had a stamped paper in his mouth. He was administered Narcan and taken to the hospital where he was found to have heroin in his system (Id. at p. 9). Prior to this on October 8, 2021, he was observed by nurse as looking “high” (Id. at p. 113). Then, on November 1, 2021, another resident reported that the appellant gave her a bag of heroin (Id. at p. 109). There were also incidents where the appellant took oxycodone in a nonprescribed manner (Id. at p. 126), was fighting with another resident (Id. at p. 12) and was intoxicated (Id. at p. 29).

The facility is planning to discharge the appellant to a homeless shelter, Friends of the Homeless, at 755 Washington St., Springfield, Massachusetts. The facility representative indicated that it has been in contact with the shelter and that it is able to take care of the appellant’s medical needs (Exhibits 1 & 3).

The appellant acknowledged taking heroin on October 26, 2021 but denied using illicit drugs on other occasions. He also denied giving heroin to another resident. He stated that he is on methadone and is trying to stay away from illicit drugs. He is currently on a public housing list in the community and does not want to go to a shelter.

During the record-open period, the facility submitted a physician’s letter stating that the appellant has been clinically cleared for discharge to a shelter with services. Also submitted were copies of the facility’s illicit drug use and room search policies (Exhibits 4-6).

Findings of Fact

Based on a preponderance of the evidence, I find the following:

1. The appellant is a 42-year-old male admitted to Highview of Northampton on July 20, 2021 (Exhibit 3).
2. His admitting diagnoses included sepsis and staff infection. He has a history of left leg amputation below knee, substance abuse, opioid dependence, diabetes, hepatitis C, and post-traumatic stress disorder. He is independent with activities of daily living and is able to ambulate on his own (Exhibit 3).
3. In a notice dated October 26, 2021, the facility planned on discharging the appellant because, "The safety of individuals in the nursing facility is endangered" (Exhibit 1).
4. The facility is planning to discharge the appellant to a homeless shelter able to take care of his needs: Friends of the Homeless, at 755 Washington St., Springfield, Massachusetts (Exhibit 1 and testimony).
5. The facility's physician indicated that the appellant has been clinically cleared for discharge to a shelter with services (Exhibit 5).
6. The appellant was found in his room on October 26, 2021 breathing with difficulty and slurring his words. He had a stamped paper in his mouth. He was administered Narcan and taken to the hospital where he was found to have heroin in his system (Exhibit 3).
7. The appellant does not dispute that he was using heroin in the facility on October 26, 2021 (testimony).
8. On October 8, 2021, he was observed by nurse as looking "high." On November 1, 2021, another resident reported that the appellant gave her a bag of heroin. There were also incidents where the appellant took oxycodone in a nonprescribed manner, was fighting with another resident and was intoxicated (Exhibit 3).

Analysis and Conclusions of Law

130 CMR 610.028: Notice Requirements Regarding Actions Initiated by a Nursing Facility(A) A resident may be transferred or discharged from a nursing facility only when

- (1) the transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the nursing facility;
- (2) the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the nursing facility;
- (3) the safety of individuals in the nursing facility is endangered;
- (4) the health of individuals in the nursing facility would otherwise be endangered;
- (5) the resident has failed, after reasonable and appropriate notice, to pay for (or failed to have the MassHealth agency or Medicare pay for) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

(B)When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 610.028(A)(1) through (5), the resident's clinical record must be documented. The documentation must be made by (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 610.028(A)(1) or (2); and (2) a physician when the transfer or discharge is necessary under 130 CMR 610.028(A)(3) & (4).

The nursing facility must meet the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including MGL c.111, §70E, which states in pertinent part that

A resident, who requests a hearing pursuant to section 48 of chapter 118E, shall not be discharged or transferred from a nursing facility licensed under section 71 of this chapter, unless a referee determines that the nursing facility has provided sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place.

In the instant case, I have found that the appellant, a resident of Highview of Northampton, in an undisputed incident, engaged in the illicit use of heroin while at the facility on October 26, 2021 for which he needed hospitalization. I have also found by a preponderance of the evidence, there were other incidents of illicit drug use and that he gave heroin to another resident in the facility. There is no question that the appellant, with a history of substance abuse, is endangering the safety of individuals in the facility at this time due to his continued active use of heroin while he is residing there.

The facility is planning to discharge the appellant to a homeless shelter, Friends of the Homeless, at 755 Washington St., Springfield, Massachusetts. A facility physician documented that he may be safely discharged to a shelter with services whereas the facility has indicated that it has reached out to the above shelter and that is indeed able to meet the appellant's medical needs. I conclude that this action complies with the "sufficient preparation and orientation" outlined above.

In summary, pursuant to the above regulations and policy, where the safety of individuals in the facility is being endangered by the appellant's illicit drug use, the facility may discharge him as planned.

The appeal is denied accordingly.

Order for the Facility

Appellant's discharge is authorized.

Notification of Your Right to Appeal to Court

If you disagree with this decision, you have the right to appeal to Court in accordance with Chapter 30A of the Massachusetts General Laws. To appeal, you must file a complaint with the Superior Court for the county where you reside, or Suffolk County Superior Court, within 30 days of your receipt of this decision.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc:

