

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Dismissed	Appeal Number:	2178350
Decision Date:	12/08/2021	Hearing Date:	11/08/2021
Hearing Officer:	Paul C. Moore	Re:	Caler v. Twin Oaks Rehab and Nursing

Appearance for Appellant:
None

Appearance for Respondent:
None



*The Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, Quincy, Massachusetts 02171*

APPEAL DECISION

Appeal Decision:	Dismissed	Issue:	Expedited nursing facility discharge
Decision Date:	12/08/2021	Hearing Date:	11/08/2021
Respondent's Rep.:	None	Appellant's Rep.:	None
Hearing Location:	Remote	Aid Pending:	No

Authority

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

Jurisdiction and Summary

On November 2, 2021, Respondent issued a notice of intent to discharge resident with less than 30 days' notice. Exhibit 1. Appellant filed a timely appeal of the discharge notice with the Board of Hearings (BOH) on the same date, November 2, 2021. Exhibit 2. Challenging a notice of transfer or discharge initiated by a nursing facility is a valid basis for appeal. 130 CMR 610.032(C).

BOH notified Appellant and Respondent that a telephonic hearing would be held on this discharge at 1:00 PM on November 8, 2021. Exhibit 3. At the appointed time, this hearing officer made multiple attempts to reach Respondent, as well as Appellant, by telephone by calling the facility. This hearing officer could not locate a live person with whom to speak.

On November 10, 2021, BOH issued an order to show cause ordering Respondent to show cause within ten (10) days as to why BOH should not dismiss this appeal due the nursing facility's failure to designate a staff person or representative to appear at the hearing per 130 CMR 610.062(B). Exhibit 4. Ten days passed from the date of the order to show cause, and BOH received no response from Respondent.¹

¹ Separately, BOH issued a dismissal of the appeal to Appellant, pursuant to 130 CMR 610.048(A)(3). Exhibit 5. The letter of dismissal offered Appellant an opportunity to vacate the dismissal by explaining in writing why she did not attend the scheduled hearing and why she did not inform BOH before the date of hearing. No response was received from Appellant.

Issue

The issue is whether Respondent has shown cause for failing to appear on the scheduled date of the hearing.

Analysis and Conclusions of Law

A nursing facility responsible for making a determination that can be appealed has rights and responsibilities set forth in 130 CMR 610.062. These responsibilities include submitting to the hearing officer at or before the hearing all evidence on which any action at issue is based, designating a staff person or representative to appear at the hearing, and ensuring that the relevant portions of a resident's medical record are present at the hearing. 130 CMR 610.062(A), (B), and (E). If a party fails to attend the hearing, the appeal will be dismissed. 130 CMR 610.048(A)(3).² If a respondent fails to appear at hearing, BOH will issue an appropriate order. 130 CMR 610.048(B).

Respondent failed to appear at the hearing scheduled on November 8, 2021, failed to make any portion of Appellant's medical record available, and failed to respond to the order to show cause. Respondent has not met its responsibilities required under the fair hearing regulations. The matter is dismissed with prejudice pursuant to 130 CMR 610.048(A)(3) with the below order pursuant to 130 CMR 610.048(B).

Order for Respondent

The facility is hereby ordered to rescind the notice of intent to discharge dated November 2, 2021. If Appellant has already been discharged, the facility is ordered to re-admit Appellant or otherwise reverse the effect of such notice of discharge.

Implementation of this Decision

If Appellant experiences problems with the implementation of this decision, she should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Barbara Calen, Twin Oaks Rehab and Nursing Center, 63 Locust Street, Danvers, MA 01923

² The regulations support that when there is a failure to appear for hearing, good cause is necessary to avoid an adverse dismissal. *See*, 130 CMR 610.035; 130 CMR 610.046; 130 CMR 610.048(D).