

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2178990
Decision Date:	01/10/2022	Hearing Date:	12/17/2021
Hearing Officer:	Christine Therrien		

Appearance for Appellant:
Pro se

Appearance for Nursing Facility:
Irena Ionkina, Social Worker; Katrina Gomes,
Social Worker



*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:	Denied	Issue:	NF discharge
Decision Date:	01/10/2022	Hearing Date:	12/17/2021
Nursing Facility's Rep.:	Irena Ionkina, Social Worker; Katrina Gomes, Social Worker	Appellant's Rep.:	Pro se
Hearing Location:	All parties appeared by phone		

Authority

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

Jurisdiction

The appellant received a 30-Day Notice of Intent to Discharge dated 11/23/2021. The notice stated that Webster Manor Rehabilitation & Healthcare ("the skilled nursing facility" or "the facility") seeks to discharge the appellant to 25 Queen St., Worcester, MA 01604 on 12/23/2021. The notice indicates the reason for the discharge is that "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility" (Exhibit 1). The appellant filed this timely appeal on 11/30/2021 (130 CMR 610.015(B); and Exhibit 2). Discharge of a Nursing Facility patient is valid grounds for appeal (130 CMR 610.029; 42 CFR Ch IV §483.200 et seq.).

Action Taken by MassHealth

The skilled nursing facility intends to discharge the appellant from the facility.

Issue

Is the planned discharge correct pursuant to 130 CMR 610.029?

Summary of Evidence

The appellant received a “30 Day Notice of Intent to Discharge Resident” on 11/23/2021 (Exhibit 1). The facility Social Worker submitted the appellant’s clinical record from the facility into evidence (Exhibit 4). The Social Worker testified that the appellant was admitted to the facility by CCA on [REDACTED] as a 90 day or less respite from AFC housing because of an incident in the community (Exhibit 4, p. 12). The Social Worker testified that the facility has been trying to reach CCA to get the appellant back into AFC housing, but the facility cannot get a response from CCA. The Social Worker testified that the appellant should hear back from a rest home by the Monday following the appeal. The Social Worker testified that the appellant suffers from alcoholism and most places will not take him because he had a drink within the last year. The Social Worker testified that the appellant has a history of stroke for which he received PT while at the facility. The Social Worker testified that the appellant ambulates fine and has a quirky gait due to the stroke (Exhibit 4, p. 117). The Social Worker testified that the appellant had wrist pain from his cane and OT worked with him for that issue. The Social Worker testified that the appellant was discharged from OT on 12/15/21 (Exhibit 4, pp. 242-246). The Social Worker testified that the appellant attends AFC three times a week and CCA provides transportation. The facility Social Worker testified that the discharge location is, 25 Queen St., Worcester, MA 01604, a homeless shelter.

The appellant testified that does not deserve to go to a shelter with his disability and will not survive in a homeless shelter. The appellant testified that he had a stroke 11 years ago, leaving his right side weak, and his walking is subpar and he cannot drive.

Findings of Fact

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

1. The appellant received a “30 Day Notice of Intent to Discharge Resident” on 11/23/2021 (Exhibit 1).
2. The appellant’s clinical record was submitted into evidence (Exhibit 5).
3. The appellant was admitted to the facility by CCA on [REDACTED] as a 90 day or less respite from AFC housing because of an incident in the community (Exhibit 4, p. 12).
4. The facility has been trying to reach CCA to get the appellant back into AFC housing, but the facility cannot get a response from CCA.
5. The appellant should hear back from a rest home by the Monday following the appeal.
6. The appellant suffers from alcoholism and most places will not take him because he had a drink within the last year.
7. The appellant had a stroke 11 years ago.
8. The appellant received PT for the stroke while at the facility.

9. The appellant ambulates fine with a cane (Exhibit 4, p. 117).
10. The appellant had wrist pain from his cane and worked with OT.
11. The appellant was discharged from OT on 12/15/21 (Exhibit 4, pp. 242-246).
12. The appellant attends AFC three times a week and CCA provides transportation.
13. The discharge location is, 25 Queen St., Worcester, MA 01604, a homeless shelter.

Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987 guarantees all residents the right to advance notice of, and the right to appeal, any transfer or discharge initiated by a nursing facility. MassHealth has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in both (1) the Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.

For the purposes of this decision, the definitions found in 130 CMR 456.402 apply:¹

“Nursing facility” - an institution or a distinct part of an institution that meets the provider-eligibility and certification requirements of 130 CMR 456.404 or 456.405. For requirements related to the transfer and discharge of residents, the term nursing facility also includes a nursing facility participating in Medicare, whether or not it participates in MassHealth.

“Discharge” - the removal from a nursing facility to a noninstitutional setting of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual; this includes a nursing facility's failure to readmit following hospitalization or other medical leave of absence.

“Transfer” — movement of a resident from:

- (1) a Medicaid- or Medicare-certified bed to a noncertified bed;*
- (2) a Medicaid-certified bed to a Medicare-certified bed;*
- (3) a Medicare-certified bed to a Medicaid-certified bed;*
- (4) one nursing facility to another nursing facility; or*
- (5) a nursing facility to a hospital, or any other institutional setting.*

A nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, resulting

¹ The regulatory language in the MassHealth Nursing Facility Manual has identical (or near-identical) regulatory counterparts within the Commonwealth's Fair Hearing Rules under 130 CMR 610.000 et seq., as well as federal regulations found under 42 CFR 483.000 et seq. As to this part of the regulatory law, the regulations in 130 CMR 610.028 and 42 CFR 483.12(a)(2) are identical to that found in 130 CMR 456.402. This appeal decision will hereafter make all further regulatory references only to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000, unless other regulatory references is noted and appropriate.

in the resident being moved to another institutional setting is also a transfer. Movement of a resident within the same facility from one certified bed to another bed with the same certification is not a transfer.

The appellant is challenging the nursing facility's attempt to discharge her to a homeless shelter in a community setting via its notice dated 11/23/2021 (Exhibits 1 and 130 CMR 456.402).

The guidelines that apply in a determination of whether appellant can be so discharged are found in 130 CMR 456.701 of the MassHealth Nursing Facility Manual. This section of the regulations strictly and specifically lists the only circumstances and conditions that allow for transfer or discharge of a resident from a nursing facility and the requirements of the relevant notice – if these requirements are not met, the facility must permit the resident to remain in the facility.

The relevant portions of the regulation at 130 CMR 456.701 read as follows:

456.701: Notice Requirements for Transfers and Discharges 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 Division 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 456.701(A)(1) through (5), the resident's clinical record **must** contain documentation to explain the transfer or discharge. **The documentation must be made by:**
- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and**
 - (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).
- (C) Before a nursing facility discharges or transfers any resident, the nursing facility must hand deliver to the resident and mail to a designated family member or legal representative a notice written in 12-point or larger type that contains, in a language the member understands, the following:
- (1) the action to be taken by the nursing facility;
 - (2) the specific reason or reasons for the discharge or transfer;
 - (3) the effective date of the discharge or transfer;
 - (4) the location to which the resident is to be discharged or transferred;
 - (5) a statement informing the resident of his or her right to request a hearing before the Division's Board of Hearings ...

(Emphasis added.)

The facility is seeking to issue a discharge notice based upon the grounds that the appellant's health has improved sufficiently so that the appellant no longer needs the services provided by the nursing facility. The 11/23/2021 "30 Day Notice of Discharge/Transfer" found in Exhibit 1 asserts the circumstances identified at 130 CMR 456.701(C)(2) and complies with the notice requirements set forth in 130 CMR 456.701(C). Therefore, appellant received adequate and actual notice of the planned discharge.

The first issue is whether the appellant's discharge is appropriate because his health has improved sufficiently so that the appellant no longer needs the services provided by the nursing facility. The appellant was admitted to the facility for a respite period due to an incident in his AFC housing, not because he had a specific health issue. While the appellant was in the facility, he had wrist pain from his cane and received OT. The appellant was discharged from OT on 12/15/21. The appellant does not have any documented conditions that require the clinical care provided by a nursing facility.

The second issue is whether the nursing facility has met 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 went into effect in November of 2008. The key paragraph of that statute, which is directly relevant to this appeal, reads as follows:

*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.***

(Emphasis added.)

The notice of discharge lists the appellant's discharge location as 25 Queen St., Worcester, MA 01604; a homeless shelter. Based on the credible testimony of the facility Social Worker, the nursing facility has met its burden of providing sufficient preparation and orientation to the resident to ensure safe and orderly discharge from the facility, and thus has complied with MGL c.111, §70E. The record reflects that the facility actively involved the appellant in selecting a discharge location; the appellant is currently on the waiting to hear from a rest home. The appellant did not provide any relevant, reliable evidence to prove that the homeless shelter listed on the "Notice of Discharge/Transfer" would not be a safe and appropriate place for his discharge as the appellant is able to ambulate with his cane. Therefore, the nursing facility's notice of discharge dated 11/23/21 meets the requirements of MGL c.111, §70E.

The totality of the evidence presented is sufficient to warrant discharge under 130 CMR 610.028(A)(4). Therefore, this appeal is denied.

Order for Nursing Facility

Proceed with notice of discharge. The appellant may not be discharged any earlier than 30 days from the date of this decision.

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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

Irena Ionkina, Webster Manor Rehabilitation & Healthcare, 745 School Street
Webster, MA 01570