

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: Approved

Appeal Number: 2200483

Decision Date:

3/03/2022

Hearing Date:

February 14, 2022

Hearing Officer:

Stanley M.
Kallianidis

Appellant Representative:



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:	Approved	Issue:	Health Improvement
Decision Date:	3/03/2022	Hearing Date:	February 14, 2022
Appellant Rep:	Jaime Margolis, Esq.	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 December 27, 2021, the respondent nursing home (herein after "facility") planned on discharging the appellant because, "Your health has improved sufficiently so that you no longer need the services provided by the nursing home" (Exhibit 1). The appellant filed this appeal in a timely manner on January 18, 2022 (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 his health has improved sufficiently so that he no longer need the services provided by the nursing home.

Issue

Has the appellant's health improved so that he no longer needs the services of his nursing facility and is this documented by his treating physician pursuant to 130 CMR 610.028?

Summary of Evidence

A representative from the Chapin Center testified that the appellant is a 70-year-old male admitted to their facility in January 2021. His primary diagnosis is stage 4 small-cell lung cancer. 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 no longer needs the services of a nursing facility. According to the facility representative, while the appellant is on oxygen, he is independent in all activities of daily living and currently has no physical therapy needs. He is able to leave the facility and has done so on occasion. The facility representative noted that even though the appellant is seeing an oncologist, he is not scheduled for his next appointment until April 2022. Also, he noted that the appellant was denied a residential MFP waiver because he does not meet the clinical requirements of the program (Exhibit 3).

According to a recent note from the facility's medical director, the appellant may be safely discharged to the community because he no longer needs custodial care offered by a skilled nursing facility at this time (Exhibit 3).

The facility is planning to discharge the appellant to a Quality Inn in West Springfield, Massachusetts. The facility representative indicated that it has been in contact with the motel and that it is able to take care of the appellant's medical needs including administration of oxygen (Exhibits 1 & 3).

The appellant's representative stated that the appellant's stage 4 lung cancer has recently returned after initially showing improvement, and as a result his health has worsened. She stated that the appellant is not opposed to the idea of leaving the facility at some point, but only when his condition allows him to do so. She indicated that in any event the Quality Inn is not an appropriate place of discharge because the appellant cannot afford the daily rate, and the facility has only offered to pay for three days stay. Further, a shelter would not be appropriate either because it would not be able to accommodate his need for oxygen (Exhibit 4).

The appellant's representative highlighted a February 10, 2022 note from the appellant's oncologist who indicated that a discharge from the facility would jeopardize his health. According to the appellant's oncologist, "Given his medical condition and his required treatment, he must remain" in the facility. Additionally, his discharge "would put his health and welfare in a grave situation and likely jeopardize and complicate his entire health situation from which he would not likely recover" (Exhibit 4).

The appellant testified that he is willing to be discharged to an apartment and not a motel,

and only when his doctor is of the opinion that this may be safely done. He testified that his health would be at risk if he were to be discharged at this time.

Findings of Fact

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

1. The appellant is a 70-year-old male admitted to Chapin Center facility in January 2021 (Exhibit 3).
2. His primary diagnosis is stage 4 small-cell lung cancer. He is independent with activities of daily living and is able to ambulate on his own. The appellant is on oxygen (Exhibit 3).
3. The appellant does not have any current physical therapy needs and is able to leave the facility on his own. The appellant was recently denied a residential MFP waiver because he does not meet the clinical requirements of the program (Exhibit 3).
4. In a notice dated December 27, 2021, the facility planned on discharging the appellant because, "Your health has improved sufficiently so that you no longer need the services provided by the nursing home" (Exhibit 1).
5. The facility is planning to discharge the appellant to a Quality Inn in West Springfield, Massachusetts. The facility has offered to pay for a three-day stay (Exhibit 1 and 3).
6. The facility's medical director indicated that the appellant has been clinically cleared for discharge to the community because he does not need the custodial care of a nursing facility (Exhibit 3).
7. A February 10, 2022 note from the appellant's oncologist indicated that a discharge from the facility would jeopardize his health. According to the appellant's oncologist, "Given his medical condition and his required treatment, he must remain" in the facility. Additionally, his discharge "would put his health and welfare in a grave situation and likely jeopardize and complicate his entire health situation from which he would not likely recover" (Exhibit 4).
8. The appellant is willing to be discharged to an apartment in the community, but only upon the advice of his own doctor (Exhibit 2 and testimony).

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 70-year-old male admitted to Chapin Center facility in January 2021, has a primary diagnosis of stage 4 small-cell lung cancer. He is independent with activities of daily living and is able to ambulate on his own. The appellant is on oxygen.

The appellant does not have any current physical therapy needs and is able to leave the facility on his own. He was recently denied a residential MFP waiver because he does not meet the clinical requirements of the program. Based upon the above facts and where the facility's medical director has approved the appellant for discharge to the community, the facility is planning his discharge to a Quality Inn in West Springfield,

Massachusetts and has offered to pay for a three-day stay there.

Notwithstanding the opinion of the facility's medical director, the appellant's own physician has indicated quite opposite that such a discharge to the community would jeopardize the appellant's health. The oncologist indicated that "Given his medical condition and his required treatment, he must remain" in the facility. Additionally, his discharge "would put his health and welfare in a grave situation and likely jeopardize and complicate his entire health situation from which he would not likely recover."

By regulation, the appellant's health improvement must be documented by his own physician before a discharge to the community may be authorized for this reason. Because the appellant's own physician is clearly opposed to such a move, a discharge for the reason of improved health is not authorized in this case.

The appeal is approved accordingly.

Order for the Facility

Rescind discharge for reason of improved health.

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.

Implementation

If this nursing facility fails to comply with the above order, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc:

[REDACTED]

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