

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



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|-------------------------|---------------|-----------------------|------------|
| Appeal Decision: | Dismissed | Appeal Number: | 2202417 |
| Decision Date: | 3/30/2023 | Hearing Date: | 02/21/2023 |
| Hearing Officer: | Paul C. Moore | | |

Appearance for Appellant:
None

Appearance for Respondent:
Bolaji Mustapha, Administrator, The Chapin
Center (by telephone)



*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

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|--------------------------|---------------|------------------------|----------------------------|
| Appeal Decision: | Dismissed | Issue: | Nursing facility discharge |
| Decision Date: | 3/30/2023 | Hearing Date: | 02/21/2023 |
| Respondent Rep.: | Administrator | Appellant 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 March 29, 2022, the respondent nursing facility issued a 30-day notice of intent to discharge resident because “the move [was] necessary for [his] own welfare and his needs [could not] be met within the nursing home” (Exhibit 1). The appellant filed a timely appeal of the discharge notice with the Board of Hearings (BOH) on the same date (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)).

By letter dated February 8, 2023, BOH notified the appellant and the respondent that a hearing would be held on this planned discharge at 1:00 PM on February 21, 2023, by telephone (Exhibit 3). At the appointed time, this hearing officer reached the respondent’s representative by phone. The hearing officer was unable to reach the appellant at the respondent nursing facility and no home telephone number was listed for the appellant.

The respondent representative indicated that the appellant had been discharged home to an address in [REDACTED] on or about [REDACTED] (Testimony).

On March 1, 2023, BOH issued an order to show cause ordering the appellant to show cause within ten (10) days as to why BOH should not dismiss this appeal due the appellant’s failure to appear at the hearing (Exhibit 4). Ten days passed from the date of the order to show cause, and BOH received no response from the appellant.

Issue

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

Findings of Fact

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

1. The appellant was a resident at the nursing facility in [REDACTED] (Exh. 1).
2. The nursing facility issued the appellant a 30-day discharge notice on March 29, 2022 because “the move [was] necessary for [his] own welfare and his needs [could not] be met within the nursing home” (*Id.*).
3. The appellant filed a timely appeal of the discharge notice on the same date (Exh. 2).
4. The BOH set a hearing date of February 21, 2023 (Exh. 3).
5. The appellant did not appear at the hearing.
6. The BOH issued an Order to Show Cause to the appellant on March 1, 2023 (Exh. 4).
7. The appellant did not timely respond to the Order to Show Cause.

Analysis and Conclusions of Law

The Fair Hearing Rules at 130 CMR 610.049 state in relevant part:

When the record discloses the failure of the appellant to file documents required by 130 CMR 610.000, to respond to notices or correspondence, or to comply with orders, or when the appellant otherwise indicates an intention not to continue with the prosecution of his or her appeal, BOH may issue an order requiring the appellant to show cause why the matter should not be dismissed for lack of prosecution. The BOH Director will make the show cause determination; however, in cases where the hearing has been scheduled and a hearing officer has been designated to conduct the hearing, the hearing officer will make the determination. If the appellant is found to have failed to show such cause, the appeal will be dismissed with prejudice.

Here, the appellant has indicated an intention not to continue with the prosecution of his appeal, after being sent an Order to Show Cause at his last known address of record, and failing to respond to same.

Based on the above regulation, the appeal is DISMISSED, with prejudice.

Order for Nursing Facility

None.

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.

Paul C. Moore
Hearing Officer
Board of Hearings

cc: Bolaji Mustapha, The Chapin Center, 200 Kendall Street, Springfield, MA 01104