

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2203868

Decision Date: 6/28/2022

Hearing Date: 06/14/2022

Hearing Officer: Rebecca Brochstein

Appearances for Appellant:

 Appellant

Appearances for Nursing Facility:

Richard Rogers, Administrator

Beverleyanne Newkirk, Dir. of Social Services

Cathy Sullivan, Business Office Manager



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

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Nursing home discharge
Decision Date:	6/28/2022	Hearing Date:	06/14/2022
Nursing Facility's Reps.:	Richard Rogers Beverleyanne Newkirk Cathy Sullivan	Appellant's Rep.:	Pro Se
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

By a notice dated May 20, 2022, Vantage at Wilbraham ("the facility") informed the appellant of its intent to discharge her (Exhibit 1). The appellant filed a timely appeal on May 25, 2022 (Exhibit 2; 130 CMR 610.615). Notification of intent to discharge an individual from a nursing home facility is a valid basis for appeal (130 CMR 610.032).

Action Taken by the Nursing Facility

The facility informed the appellant of its intention to discharge her because she no longer requires the services provided by the facility and for nonpayment.

Issue

The issue is whether the facility is justified in seeking to discharge the appellant, and whether it followed proper procedures in doing so.

Summary of Evidence

The facility's administrator, director of social services, and business office manager appeared at the hearing telephonically and offered the following background information through testimony and documentary evidence: The appellant, who is in her early 50s, was admitted to the facility in July 2021. Her medical history includes coronary artery disease, history of DVT, COPD, diabetes mellitus, morbid obesity, diabetic neuropathy, and a pulmonary nodule. The appellant was previously approved for MassHealth coverage of her stay. However, on December 8, 2021, an Aging Services Access Point (ASAP), after conducting an evaluation on behalf of MassHealth, determined that the appellant is not clinically eligible for MassHealth payment of nursing facility services because such services are no longer medically necessary for her. See Exhibit 4 at 2.

On May 20, 2022, the facility issued a 30-Day Notice of Intent to Discharge Resident.¹ The notice states the basis of the action as follows: "It has been deemed that your health has improved sufficiently so that you no longer need the services provided by the [nursing] facility. As such, you have failed, after reasonable and appropriate notice, to pay (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility." The notice indicated that the facility seeks to discharge the appellant to one of two area shelters. See Exhibit 1. The appellant filed an appeal of the notice on May 25, 2022.

The facility representatives testified that the appellant has had no source of payment for her care since December 15, 2022; as of the statement dated May 17, 2022, the appellant had incurred \$67,500 in unpaid charges. They also emphasized that the appellant no longer needs nursing home level of care, as evidenced by the ASAP decision.² They testified the appellant was discharged from physical therapy on March 14, 2022, and can ambulate down the hallway from her room and back. The facility representatives stated that they provided her with a list of shelter options, including some that provide medical support and social service resources, and have reached out to several of them on her behalf. They stated that it is ultimately up to the appellant to decide where she would prefer to go.

The appellant appeared at the hearing telephonically and testified on her own behalf. She complained that the facility doctor only sees her for five minutes at a time, and does not give a full examination. She denied that she no longer needs physical therapy, stating that she tries to get up and walk more but that she has swelling in her leg. She stated that she would prefer to stay at the facility if they can resume physical therapy for her.

¹ The record does not indicate why there was such a significant delay between the ASAP determination of the appellant's clinical ineligibility and the facility's notice. The facility appears to have issued a previous discharge notice (which was appealed) but the disposition of that action is not clear.

² The facility's submission includes doctor's notes from May and June 2022. The notes reference the planned discharge and indicate there is an appeal "coming up." See Exhibit 4 at 22.

Findings of Fact

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

1. The appellant, who is in her early 50s, was admitted to the facility in July 2021. Her medical history includes coronary artery disease, history of DVT, COPD, diabetes mellitus, morbid obesity, diabetic neuropathy, and a pulmonary nodule.
2. The appellant was previously approved for MassHealth coverage of her stay.
3. In or around December 2021, an ASAP performed a review of the appellant's clinical eligibility for MassHealth payment of nursing facility services.
4. On December 8, 2021, the ASAP notified the appellant that she is not clinically eligible for MassHealth payment of nursing facility services because those services are not medically necessary for her.
5. The appellant has not had a payment source to cover her stay at the facility since December 15, 2021.
6. As of May 2022, the appellant had \$67,500 in unpaid charges on her account with the facility.
7. The appellant was discharged from physical therapy on March 14, 2022.
8. On May 20, 2022, the facility issued a 30-Day Notice of Intent to Discharge Resident. The two bases of the discharge notice were (a) that the appellant's health has improved sufficiently so that she no longer requires nursing facility services, and (b) that she has failed, after reasonable and appropriate notice, to pay (or to have Medicare or Medicaid pay) for her stay.
9. The facility identified two shelters as possible discharge locations, and has researched others as well. Some of the shelters offer medical support in addition to social services resources.
10. On May 25, 2022, the appellant filed a timely appeal of the notice.
11. The facility has provided sufficient preparation and orientation to the appellant to ensure her safe and orderly discharge from the facility to another safe and appropriate place.

Analysis and Conclusions of Law

The requirements for a nursing facility-initiated transfer or discharge are set forth at 130 CMR 456.429, 456.701 through 456.704, and 610.028 through 610.030. The regulation permits transfer or discharge only when one of the following circumstances is met: (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.

In this case, the facility contends that its intent to discharge the appellant is justified for two reasons: Because her health has improved sufficiently such that she no longer requires the services provided by the facility, and because she has failed to pay (or have Medicare or MassHealth pay) for her stay. As to the first reason, the record indicates that the ASAP screened her clinically ineligible for MassHealth payment because the services are no longer medically necessary; in addition, she has been discharged from physical therapy, and it is not apparent that she has any other skilled needs at this time. The medical records in evidence describe her medical issues, but again, there is no indication that the treatment plan for any of her ailments requires nursing facility-level of care. Still, as there does not appear to be an explicit statement from the appellant's doctor to this effect,³ the record does not firmly support discharge on this basis.

In contrast, there is ample support for discharge for nonpayment. The appellant has not had a source of payment for her care since December 15, 2021, which is when MassHealth ended its coverage of her stay at the facility. As of May, she had incurred charges of \$67,500. The appellant does not dispute her nonpayment, and, notably, did not file an appeal of the ASAP's determination that she is no longer eligible for MassHealth coverage of her care. Accordingly, the record supports the facility's notice of discharge on the basis of nonpayment.

The record also shows that the facility has made substantial efforts to assist the appellant with post-discharge planning. It has identified a variety of possible discharge locations, at least some of which would be equipped to provide the appellant with medical support. At this point, more than six months after MassHealth found her clinically ineligible and stopped payment, the appellant should be prepared to select a specific discharge location.⁴

For the foregoing reasons, this appeal is denied.

³ Under 130 CMR 610.028(B), when a facility discharges or transfers a resident because their health has improved sufficiently so that they no longer need nursing home services, the clinical record must be documented by the resident's physician.

⁴ Under G. L. c. 111, § 70E, "[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." The facility has complied with this requirement.

Order for the Nursing Home

Proceed with planned discharge no less than 30 days after 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.

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Vantage at Wilbraham
Attn: Administrator
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Wilbraham, MA 01095