

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2204413
Decision Date:	7/14/2022	Hearing Date:	6/28/2022
Hearing Officer:	Cynthia Kopka	Record Open to:	7/1/2022

Appearance for Appellant:
Pro se, with [REDACTED]

Appearance for Respondent:
Stacey Kirby, BOM
Rick Wetterberg, Administrator
Kayleigh Williams



*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:	Nursing facility discharge
Decision Date:	7/14/2022	Hearing Date:	6/28/2022
Respondent's Rep.:	Stacey Kirby, Rick Wetterberg, Kayleigh Williams	Appellant's Rep.:	Pro se, [REDACTED]
Hearing Location:	Quincy (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

By notice dated June 9, 2022, South Shore Rehabilitation and Skilled Care ("Respondent" or "the facility") informed Appellant of its intent to discharge Appellant from the facility on July 9, 2022. Exhibit 1. Appellant filed a timely appeal on June 10, 2022. Exhibit 2. 130 CMR 610.615. Challenging the discharge or transfer from a nursing facility is a valid basis for appeal. 130 CMR 610.032. The hearing record was held open through July 1, 2022 to allow the parties to resolve the appeal. Exhibit 5.

Action Taken by Respondent

Respondent informed Appellant of its intent to discharge Appellant from the facility.

Issue

The appeal issue is whether Respondent satisfied its statutory and regulatory requirements when it issued Appellant the notice of intent to discharge.

Summary of Evidence

Respondent, a skilled nursing facility licensed in Massachusetts, was represented by telephone by its business office manager, administrator, and social worker. Respondent's representatives submitted documents in support of its position, Exhibit 4. Appellant appeared by telephone with a representative. A summary of testimony and supporting records follow.

By hand-delivered letter dated June 9, 2022, Respondent informed Appellant of its intent to discharge Appellant from the facility to his sister's home. Exhibit 1. A copy of the notice was not provided to a representative on Appellant's behalf. The notice stated that Respondent sought to discharge Appellant on July 9, 2022 because Appellant "will not cooperate with the business office in regard to signing paperwork for long term care conversion, and room and board has not been paid since December 2021 despite numerous efforts." *Id.* The form of the notice also stated:

Federal and Massachusetts law states the facility must permit each resident to remain in the facility and not transfer or discharge the resident unless one or more of the following conditions have been met:

- Transfer is necessary for the resident's welfare and the resident's needs cannot be met by the facility
- The resident's health has improved sufficiently so the resident no longer needs the services provided by the facility.
- The safety of the individuals in the facility is endangered due to the clinical or behavioral status of the resident.
- The health of the individuals in the facility would otherwise be endangered.
- The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Nonpayment applies if the resident does not submit the necessary paperwork for payment, or if the claim is denied, the resident refused to pay for their stay.
- The facility ceases to operate.

Id.

Respondent's representatives confirmed that the regulatory reason for the discharge is that Appellant has failed to pay or have Medicaid pay for the stay in the facility. The notice identified a social worker as the person responsible for supervising the discharge and explained Appellant's appeal rights. The notice included contact information for a local long term care ombudsman, the disability law center, centers for public representation (including a disabled persons' protection commission) and a legal assistance corporation. *Id.*

Appellant is in his seventies. A letter authored by Respondent's business office manager indicated that Appellant admitted on [REDACTED]. Exhibit 4 at 37. On February 16, 2022, MassHealth forwarded to the facility a long-term care conversion information request, with information on Appellant's income and assets due 30 days from the date of the notice. *Id.* at 38. The information

request showed that MassHealth's short-term coverage of Appellant's stay at the facility ended on December 10, 2021. *Id.* Respondent's representatives testified that they made numerous attempts to have Appellant sign the appropriate papers to fulfill the information request, but Appellant refused. As of June 30, 2022, Appellant owed a balance of \$44,544.64. *Id.* at 37, 39. Respondent's representatives testified that Appellant told them that he would discharge to his sister's residence. *Id.* at 28. On June 23, 2022, Appellant reported to Respondent that his sister's house was not available. *Id.* at 27.

Respondent's representatives expressed a willingness to rescind the notice of discharge if Appellant signed the paperwork on or before July 1, 2022.

Appellant and his representative testified that Appellant was not approached regarding the long-term care conversion until the notice of discharge issued. Appellant has been working with the Old Colony Elder Services to secure housing and has multiple applications entered. Appellant was planning to discharge to his sister's residence, but his sister has a two-bedroom home and both bedrooms are occupied. Appellant's mobile home was damaged in storms last October 2021 and has been condemned by the board of health, so Appellant has no place to live.

Regarding his failure to cooperate with the long-term care conversion, Appellant testified that he thought he would be out of the facility and in housing at this time. Appellant's representative acknowledged that even if Appellant was out of the facility, MassHealth coverage was needed to pay for the stay beginning December 10, 2022. Later in the hearing, Appellant conceded that he had been approached several times to sign the paperwork. He did not recall when he was first approached but testified that it was not as early as February 2022.

Appellant testified that he would not sign the paperwork until speaking to his attorney. Appellant was concerned that by signing the paperwork, "they would go after" all his financial holdings. Appellant's representative asserted that Appellant should financially qualify for MassHealth. Appellant's representative sought a new notice of discharge that did not list the sister's address. Appellant's representative expressed concern that Appellant's housing search would be complicated by signing a long-term care conversion. Appellant agreed to speak to his attorney the following day.

The hearing record was held open to allow the parties to come to an agreement. Exhibit 5. The business office manager of the facility reported on July 1, 2022 that Appellant maintained his refusal to sign the papers for the MassHealth long term care conversion. Exhibit 6.

Findings of Fact

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

1. Appellant is in his seventies and admitted to the facility in [REDACTED]. Exhibit 4 at 37.
2. Appellant's MassHealth short term coverage expired on December 9, 2021. *Id.* at 38.

3. On February 16, 2022, MassHealth forwarded to the facility a long-term care conversion information request, with information on Appellant's income and assets due 30 days from the date of the notice. *Id.*
4. Representatives from the facility approached Appellant to sign paperwork for the long-term care conversion on several occasions.
5. By hand-delivered letter dated June 9, 2022, Respondent informed Appellant of its intent to discharge Appellant from the facility to an address identified to be his sister's home. Exhibit 1.
6. The notice stated that Respondent sought to discharge Appellant on July 9, 2022 because Appellant "will not cooperate with the business office in regard to signing paperwork for long term care conversion, and room and board has not been paid since December 2021 despite numerous efforts." *Id.*
7. The notice informed Appellant that the facility may discharge a resident if

The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. Nonpayment applies if the resident does not submit the necessary paperwork for payment, or if the claim is denied, the resident refused to pay for their stay.

Id.
8. The notice identified a social worker as the person responsible for supervising the discharge and explained Appellant's appeal rights. The notice included contact information for a local long term care ombudsman, the disability law center, centers for public representation (including a disabled persons' protection commission) and a legal assistance corporation. *Id.*
9. Appellant timely appealed the notice of discharge on June 10, 2022. Exhibit 2.
10. The record indicates that on June 9, 2022, Appellant informed the facility that he planned to discharge to his sister's residence. Exhibit 4 at 28.
11. On June 23, 2022, Appellant reported to Respondent that his sister's house was not available. *Id.* at 27.
12. As of July 1, 2022, Appellant did not sign the documents necessary for the MassHealth conversion. Exhibit 6.

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 action initiated by a nursing

facility. Massachusetts has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and some of the relevant regulations may be found in both (1) the MassHealth Nursing Facility Manual regulations at 130 CMR 456.000 *et seq.*, and (2) the Fair Hearing Rules at 130 CMR 610.000 *et seq.*

Per 130 CMR 456.701(A) and 130 CMR 610.028(A), a nursing facility resident may be transferred or discharged 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.

When the facility transfers or discharges a resident, the resident's clinical record must contain documentation to explain the transfer or discharge. 130 CMR 456.701(B); 130 CMR 610.028(B).

Prior to discharge or transfer, the nursing facility must hand deliver to the resident and mail to a designated family member or legal representative (if the resident has made such a person known to the facility), 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 MassHealth agency including:
 - (a) the address to send a request for a hearing;
 - (b) the time frame for requesting a hearing as provided for under 130 CMR 610.029; and
 - (c) the effect of requesting a hearing as provided for under 130 CMR 610.030;
- (6) the name, address, and telephone number of the local long-term-care ombudsman office;
- (7) for nursing facility residents with developmental disabilities, the address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. § 6041 *et seq.*);

- (8) for nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. § 10801 et seq.);
- (9) a statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal services office. The notice should contain the address of the nearest legal services office; and
- (10) the name of a person at the nursing facility who can answer any questions the resident has about the notice and who will be available to assist the resident in filing an appeal.

130 CMR 610.028(C).

Pursuant to 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made by the nursing facility at least 30 days before the date the resident is to be discharged or transferred, except as provided for under 130 CMR 610.029(B) and (C) when the discharge is being made on an emergency basis. *See also* 130 CMR 456.702(A).

Further, Mass. Gen. Laws ch. 111, §70E provides 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.” Finally, federal regulations require that a nursing facility provide sufficient preparation for a safe and orderly discharge. *See* 42 CFR 483.12(a)(7).

The undisputed evidence shows that Appellant did not cooperate with the facility’s attempt to secure MassHealth payment for his stay at the facility. As a result, the facility has not received payment for Appellant’s stay beginning December 10, 2021. Though Appellant raised a dispute as to when and how many times he was told about the conversion and asked for his participation, he conceded that he was approached several times on the issue. Appellant’s continued refusal to cooperate even after this hearing is illustrative, as is Appellant’s position that he did not cooperate because he thought he would have been discharged by this time. Respondent’s position that Appellant had reasonable and appropriate notice of his obligation to pay or to participate in the MassHealth application is more credible than Appellant’s testimony.

Appellant and his representative argued that the notice of discharge listed his sister’s address, which is not an available housing option for him. The record indicates that at the time the facility noticed the discharge, they learned from Appellant that he planned to go to his sister’s home. Appellant did not report to facility representatives that his sister’s home was unavailable until June 23, 2022. Appellant’s argument that Appellant’s sister does not have room in her home is not sufficient to demonstrate that his sister’s home was not a safe or appropriate place for discharge, or that the facility’s notice was invalid for listing this address.

As Appellant was not able to demonstrate that the nursing facility failed to meet its obligations in

issuing the notice of discharge, this appeal is denied.

Order for Respondent

Proceed with the discharge as set forth in the notice dated June 9, 2022 after the 30-day stay (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.

Implementation of this Decision

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.

Cynthia Kopka
Hearing Officer
Board of Hearings

cc:



MH Legal – Sharon Boyle

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