

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2204942
Decision Date:	7/22/2022	Hearing Date:	07/19/2022
Hearing Officer:	Patricia Mullen	Record Open to:	07/22/2022

Appearance for Appellant:
Pro se

Appearances for Nursing Facility:
Samantha White, Social Worker; Mark
Nugent, Administrator



*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:	7/22/2022	Hearing Date:	07/19/2022
Nursing Facility's Reps.:	Social Worker; Administrator	Appellant's Rep.:	Pro se
Hearing Location:	Quincy Harbor South		

Authority

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

Jurisdiction

Through a notice dated June 1, 2022, the nursing facility informed the appellant of its intent to discharge him on June 30, 2022 to a specific address, because he has failed after reasonable and appropriate notice to pay for (or to have Medicaid or Medicare pay for) a stay in the nursing facility. (130 CMR 610.028 and Exhibit 1). The appellant filed this appeal in a timely manner on June 29, 2022. (see 130 CMR 610.015(B) and Exhibit 2). Notice of discharge from a nursing facility is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by the Nursing Facility

The nursing facility issued a notice of intent to discharge to the appellant.

Issue

The appeal issue is whether the nursing facility satisfied the statutory and regulatory requirements pursuant to 130 CMR 610.028 when it issued the notice of intent to discharge the appellant.

Summary of Evidence

The appellant appeared telephonically at the hearing. The social worker and administrator from the skilled nursing facility (SNF) appeared telephonically. The appellant was admitted to the nursing facility on [REDACTED] from the hospital for treatment of rhabdomyolysis and muscle weakness. (Exhibit 4, pp. 5, 6). The appellant is prescribed physical therapy (PT), three times a week, for 30 days for gait training, neuromuscular re-education, and therapeutic exercises. (Exhibit 4, p. 11). The nursing facility physician reported that the appellant uses a wheelchair for mobility around the nursing facility and can ambulate household distances with a rolling walker. (Exhibit 5, p. 2). The nursing facility physician reported that there is no medical need for the appellant to remain a resident in the nursing facility and he is capable and safe to discharge to the community. (Exhibit 5, p. 2).

The SNF administrator testified that the nursing facility issued the notice of discharge dated June 1, 2022 because the appellant did not pay the patient paid amount (PPA) calculated by MassHealth. Subsequent to the hearing, the nursing facility submitted the MassHealth notice dated June 16, 2022 in which MassHealth calculates the appellant's PPA of \$729.20 to begin May 1, 2022. (Exhibit 7, p. 3). The SNF administrator stated that as of the date of hearing, the appellant owed \$2,187.60 to the nursing facility. The SNF social worker stated that the appellant is still screened clinically eligible for nursing facility services and thus MassHealth is covering all costs, except for the PPA, however the appellant is improving and may not continue to be screened clinically eligible. The SNF social worker noted that the address to which the nursing facility intends to discharge the appellant is a shelter. The SNF social worker stated that the SNF has worked with the appellant to attempt to find him housing. The SNF record shows that the social worker met with the appellant on April 28, 2022 to discuss discharge and called over 20 rooming houses and single room occupancy housing in the area; most places did not have availability. (Exhibit 4, p. 34). The SNF social worker spoke with admissions from a residence in Lowell and was emailed an application which was completed and sent back to the residence. (Exhibit 4, p. 34). The social worker noted in a Social Services note that a wheelchair application will be sent to MassHealth once the facility has a definite date of discharge for the appellant; the appellant was set up as a new patient with a new primary care physician (PCP) at a health center; an appointment was made with the new PCP. (Exhibit 4, pp. 32, 33). On June 1, 2022, the SNF social worker and the SNF business office manager met with the appellant to discuss non-payment and the appellant indicated that he could not pay the amount due. (Exhibit 4, p. 30). On June 29, 2022, the SNF social worker spoke with the appellant about the SNF providing transportation to the site of discharge and noted visiting nurse services would be set up. (Exhibit 4, p. 28).

The appellant stated that he needs his to save his Social Security income to pay for a place to live. The appellant noted that no one is helping him find a place to live. The appellant stated that he is on a wait list for housing and has met with Northeast Independent Living and filled out an application for housing. The appellant stated that he was in prison for 3 years and was out only 10 days before the fall that led to his hospitalization. The appellant stated that he was staying with a friend for those 10 days but the friend cannot take him back. The SNF administrator stated that if the appellant pays the balance due, he can stay at the nursing facility. The appellant stated that he is not

paying the balance.

The record was left open for 3 days to give the nursing facility the opportunity to submit the appellant's bill and the MassHealth notice of PPA. (Exhibit 6). Within the record open period, the nursing facility submitted the bill given to the appellant which shows the amount due of \$2,187.60 through July, 2022. (Exhibit 7, p. 2). As noted above, the nursing facility also submitted a copy of the appellant's MassHealth notice dated June 16, 2022. (Exhibit 7, p. 3).

Findings of Fact

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

1. The appellant was admitted to the nursing facility on [REDACTED] from the hospital for treatment of rhabdomyolysis and muscle weakness.
2. The appellant is prescribed PT, three times a week, for 30 days for gait training, neuromuscular re-education, and therapeutic exercises.
3. The appellant uses a wheelchair for mobility around the nursing facility and can ambulate household distances with a rolling walker.
4. The nursing facility physician reported that there is no medical need for the appellant to remain a resident in the nursing facility and he is capable and safe to discharge to the community.
5. By notice dated June 16, 2022, MassHealth calculated a monthly PPA of \$729.20 for the appellant to pay to the nursing facility, beginning May 1, 2022.
6. As of the date of hearing, the appellant owed \$2,187.60 to the nursing facility.
7. The nursing facility has billed the appellant for the outstanding debt.
8. The address to which the nursing facility intends to discharge the appellant is a shelter.
9. The appellant was in prison for 3 years and was out only 10 days before the fall that led to his hospitalization; the appellant was staying with a friend for the 10 days between his prison release and hospitalization, but the friend cannot take him back.
10. The SNF social worker met with the appellant on April 28, 2022 to discuss discharge and called over 20 rooming houses and single room occupancy housing in the area; most places did not have availability; the SNF social worker spoke with admissions from a residence in Lowell and was emailed an application which was completed and sent back to the residence.
11. The nursing facility will submit a wheelchair request to MassHealth once the facility has a definite date of discharge for the appellant; the appellant was set up as a new patient with a

new PCP at a health center; an appointment was made with the new PCP; the nursing facility will provide transportation to the site of discharge and visiting nurse services will be set up for the appellant.

12. The appellant is on a wait list for housing and has met with Northeast Independent Living and filled out an application for housing.

Analysis and Conclusions of Law

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) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

130 CMR 610.028(A); 456.701(A).

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)(4).

130 CMR 610.028(B).

The issue on appeal is whether the appellant has failed, after reasonable and appropriate notice, to pay, or failed to have Medicaid or Medicare pay, for his stay at the nursing facility pursuant to 130 CMR 610.028(A)(5). By notice dated June 16, 2022, MassHealth calculated a monthly PPA of \$729.20 for the appellant to pay to the nursing facility beginning May 1, 2022. The SNF has billed the appellant for the PPA and the appellant currently owes the nursing facility \$2,187.60. Pursuant to 130 CMR 520.026, all MassHealth long term care residents are responsible for a PPA calculated pursuant to that regulation. The SNF has received no payment and the appellant indicated that he will not pay the past due amount. I find that the appellant has not paid, after reasonable and appropriate notice, for his stay at the nursing facility and the facility was in

accordance with 130 CMR 610.0128 when it issued the notice of discharge.

The second issue is whether the nursing facility has met the requirements of MGL Chapter 111, Section 70E and 42 CFR 483.12(a)(7) in providing sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place. The Federal Centers for Medicare and Medicaid defines “sufficient preparation” within the meaning of 42 CFR 483.12(a)(7) to mean that the facility informs the resident where he or she is going and takes steps under its control to assure safe transportation; the facility should actively involve, to the extent possible, the resident and the resident’s family in selecting the new residence. (see *Centennial Healthcare Investment Corp. v. Commissioner of the Division of Medical Assistance*, Appeals Court No. 03-P-879, 2004)

The SNF has met its burden of providing sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place. The SNF intends to discharge the appellant to a shelter with community services put in place. I determine that the place to which the nursing facility intends to discharge the appellant is safe and appropriate based on the appellant’s nursing facility record. The nursing facility physician reported that there is no medical need for the appellant to remain a resident in the nursing facility and he is capable and safe to discharge to the community. The nursing facility involved the appellant, to the extent possible, in discharge planning however the fact that the appellant has yet to find a permanent place to live is out of the control of the SNF.

The nursing facility’s notice of discharge dated June 1, 2022 meets the requirements of 130 CMR 610.028 and MGL Chapter 111, section 70E. The appeal is denied.

Order for the Nursing Facility

Proceed with the discharge as set forth in the notice dated June 1, 2022 after the 30 days 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 you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings at the address on the first page of this decision.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: The Oxford, Attn.: Administrator, 689 Main St., Haverhill, MA 01830