

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2205487
Decision Date:	8/12/2022	Hearing Date:	8/10/2022
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:
Pro se

Appearance for Nursing Facility:
Norma B. Mullings, Administrator
Rebecca Cochran, Business Office Manager
Mandy Shapiro, Director of Social Services



*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- Initiated Discharge
Decision Date:	8/12/2022	Hearing Date:	08/10/2022
Nursing Facility's Reps.:	Norma B. Mullings, Administrator, et.al.	Appellant's Rep.:	Pro se
Hearing Location:	(Remote)		

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 28, 2022, the nursing facility informed Appellant that he would be discharged to a community setting for failure to pay for his stay at the nursing facility (130 CMR 456.701, 610.028; Exhibit 1). Appellant filed this appeal in a timely manner on July 25, 2022 (130 CMR 610.015(B); Exhibit 2). Nursing facility residents have the right to request an appeal of any nursing facility-initiated transfer or discharge (130 CMR 456.703, 610.032(C)).

Action Taken by the Nursing Facility

The nursing facility notified Appellant that he would be discharged to a community setting for failure to pay for his stay at the nursing facility.

Issue

The appeal issue is whether the nursing facility was correct, pursuant to 130 CMR 456.701, 610.028 and 610.029, in notifying Appellant of its intent to discharge him to a community setting for failure to pay for his stay at the nursing facility.

Summary of Evidence

The nursing facility was represented by the facility administrator, business office manager, and the social services director. On June 28, 2022, the nursing facility issued a 30-day notice of intent to discharge Appellant to a local Days Inn because he had failed to pay the Patient Paid Amount (PPA) due (Exhibit 1). Appellant is [REDACTED] and was admitted to the nursing facility in [REDACTED]. Appellant uses an electric wheelchair secondary to a left lower leg amputation below the knee. Appellant is able to independently transfer into and out of his wheelchair and requires assistance with other activities of daily living. Appellant is also diagnosed with Chronic Obstructive Pulmonary Disease, depression, and Bipolar Disorder (Exhibit 4, p. 12). The nursing facility representatives testified that Appellant is receiving MassHealth coverage for his nursing facility care. MassHealth calculated a \$955.20 Patient Paid Amount (PPA) beginning in December 2021 which Appellant has refused to pay other than two \$50 payments made on April 22, 2022, and May 13, 2022. Appellant currently owes the nursing facility \$9,827.20 for unpaid PPA. The nursing facility administrator stated that she offered Appellant a \$50 per month payment arrangement to cover the amount in arrears if Appellant started consistently paying the PPA to the nursing facility. She stated that Appellant has refused to make payments, and instead has purchased computers and software to engage in buying cryptocurrency instead of paying the PPA. The nursing facility representatives testified that Appellant has completed housing applications and is awaiting a determination. The facility deemed a local Days Inn appropriate for discharge because unlike local homeless shelters, it is handicapped-accessible. The facility would pay for two days stay and make necessary referrals to start therapy and nursing services for Appellant in the community. The nursing facility administrator renewed the offer to allow Appellant to stay at the facility if he paid the PPA due in September 2022, stayed current with PPA payments, and agreed to a payment plan to address unpaid PPA since December 2021.

Appellant testified that the facility did not tell him he owed a PPA starting in December 2021 and only approached him after he owed several thousand dollars. Appellant stated that he had lengthy discussions with the business office about extra savings he had accumulated and needed to manage to be MassHealth eligible. He stated that has not paid the PPA because he has other bills to pay such as his cell phone expenses, and furniture payments initiated with his now deceased spouse for a housing unit in Phoenix, Arizona. He stated that his money is automatically dispersed from is checking account, but he is not exactly sure where it goes. Appellant stated that he receives his Social Security income on the 3rd of each month and acknowledged that while residing at the nursing facility he has purchased computers and software so he could make money online fixing computers. He added that the venture has not gone well because he doesn't understand computers well enough. Appellant denied engaging in cryptocurrency even though he thinks its a great concept. Appellant stated that he was homeless prior to his admission to the nursing facility, and after undergoing an amputation he does not want to be homeless again. He stated that he is waiting for a prosthetic and would happily leave the facility after receiving it but feels the nursing facility should allow him to stay for 90 days after he receives the prosthetic without charging him a PPA. Appellant stated that he will pay the facility once he receives the prosthetic and moves to the community. Appellant also stated that he currently has no money in his bank account but would pay the facility on September 3, 2022 when he receives his Social Security income.

Findings of Fact

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

1. On June 28, 2022 the nursing facility issued a 30-day notice of intent to discharge Appellant to a local Days Inn because he had failed to pay the Patient Paid Amount due since December 2021.
2. Appellant is [REDACTED] and was admitted to the nursing facility in [REDACTED].
3. Appellant uses an electric wheelchair secondary to a left lower leg amputation below the knee.
4. Appellant is able to independently transfer into and out of his wheelchair and requires assistance with other activities of daily living.
5. Appellant is diagnosed with Chronic Obstructive Pulmonary Disease, depression, and Bipolar Disorder.
6. Appellant is receiving MassHealth coverage for his nursing facility care. MassHealth calculated a \$955.20 Patient Paid Amount (PPA) beginning in December 2021 which Appellant has refused to pay other than two \$50 payments made on April 22, 2022, and May 13, 2022.
7. Appellant currently owes the nursing facility \$9,827.20 for unpaid PPA.
8. Appellant has refused to make PPA payments, and instead has purchased computers and software to engage in online business ventures.
9. Appellant has completed housing applications and is awaiting a determination.
10. The Days Inn is handicapped-accessible. The facility would pay for two days stay and make necessary referrals to start therapy and nursing services for Appellant in the community.

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 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.¹

¹ The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has

Before a nursing facility discharges or transfers any resident, the nursing facility must hand deliver to the resident and mail to a designated family member or legal representative 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 Division's Board of Hearings 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 456.702; and
 - c) the effect of requesting a hearing as provided for under 130 CMR 456.704;
- (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. s. 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. s. 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 456.701(C))

Further, the notice requirements set forth in 130 CMR 456.701(A) state that 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

regulations which are identical (or nearly identical) to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. as well as corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000 unless otherwise noted and required for clarification.

- 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)** (emphasis added); or
 - (6) the nursing facility ceases to operate.

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (5), the resident's clinical record must contain documentation to explain the transfer or discharge. The documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).

(130 CMR 456.701(B))

The nursing facility must also comply with all other applicable state laws, including M.G.L. c.111, §70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, reads:

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.²

The June 28, 2022 Notice of Intent to Discharge meets regulatory requirements for notice of intent to discharge a nursing facility resident outlined at 130 CMR 456.701(C).³ Appellant is unequivocally obligated to pay to the nursing facility the Patient Paid Amount calculated by MassHealth.⁴ MassHealth calculated a \$955.20 PPA beginning in December 2021 which Appellant has refused to pay other than two \$50 payments made on April 22, 2022, and May 13, 2022. As a result, Appellant owes the nursing facility \$9,827.20 in unpaid PPA. The nursing facility administrator testified to the facility's ongoing efforts to resolve the issue if Appellant paid the

² See also 42 USC 1396r(c)(2)(C) which requires that a nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

³ See Exhibit 1.

⁴ The Patient-paid Amount is the amount that a member in a long-term-care facility **must** contribute to the cost of care under the laws of the Commonwealth of Massachusetts. 130 CMR 515.001 (emphasis added).

facility the PPA on September 3, 2022, stayed current in paying the PPA, and agreed to pay a reduced monthly payment toward the amount in arrears. However, rather than pay the PPA, Appellant has purchased computers and software to engage in online business ventures possibly including trading cryptocurrency. Appellant's testimony that he does not know where his income is going every month is not credible. Appellant demonstrated that he understands when he receives his Social Security income, the PPA amount due, as well as his obligation to pay the facility. He simply does not want to pay the PPA.⁵ Although Appellant expressed a desire to not be homeless again, he expressed no concerns about having his medical needs met in the community other than paying the costs of housing, and the clinical record does not contravene the safety or appropriateness of the proposed discharged plan (Exhibit 4). While the discharge plan does not represent an ideal setting for Appellant, the nursing facility has provided sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the facility to a safe and appropriate place that is handicapped accessible, and with referrals for nursing and therapy services in the community.

Therefore, Appellant's appeal is DENIED subject to the order below.

Order for the Nursing Facility

Do not discharge Appellant within 30 days of the date on this hearing decision. If Appellant pays the full PPA due on September 3, 2022, rescind the June 28, 2022 notice. If Appellant does not pay the full PPA amount due on September 3, 2022, discharge Appellant pursuant to the June 28, 2022 notice 30 days after the date on this hearing 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

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: Norma B. Mullings, Administrator, Parsons Hill, 1350 Main Street, Worcester, MA 01603

⁵ See Exhibit 4, p. 6: "This writer have (sic) made several attempt (sic) to collect payment for stay at the facility. The resident has promised to pay to stay current and pay \$50 on the past due amount, when approached by this writer for this month's payment resident stated he will not pay and that this writer is to put him on the street because he has bills to pay. This writer educated resident he can receive a 30-day notice for non-payment. Resident stated he knows and don't (sic) care.