

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2206620

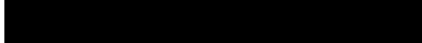
Decision Date: 9/16/2022

Hearing Date: 09/14/2022

Hearing Officer: Patricia Mullen

Record Open: 09/15/2022

Appearances for Appellant:



Appearances for Nursing Facility:

Mark Forest, Administrator; Stephanie Kay, LCSW, Director of Social Services; Ken Haggard, Substance Use Counselor; Jennifer Young, Social Worker in training



*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:	Expedited nursing facility discharge
Decision Date:	9/16/2022	Hearing Date:	09/14/2022
Nursing Facility's Reps.:	Mark Forest, Administrator; Stephanie Kay, LCSW, Director of Social Services; Ken Haggard, Substance Use Counselor; Jennifer Young, Social Worker in training	Appellant's Reps.:	Pro se; spouse
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 of intent to discharge with less than 30 days' notice, dated September 1, 2022, the nursing facility informed the appellant that she would be discharged to an address listed on the notice because the safety of the individuals in the nursing facility is endangered due to her clinical or behavioral status. (130 CMR 610.029(B)(2); 610.015(F) and Exhibit 1). The appellant filed this appeal in a timely manner on September 6, 2022. (see 130 CMR 610.015(F); 610.015(B)(5); 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 the appellant with less than 30 days' notice.

Issue

The appeal issue is whether the facility satisfied its statutory and regulatory requirements pursuant to 130 CMR 610.028; 610.029(B), when it issued the appellant the notice of intent to discharge.

Summary of Evidence

The appellant appeared telephonically at the hearing with her spouse. The skilled nursing facility (hereinafter the "SNF") was represented telephonically by its Administrator, its Director of Social Services, its Substance Use Counselor, and a Social Worker in training. The SNF submitted pages from the appellant's nursing facility record which were entered into the hearing record. (Exhibit 6, pp. 1-35).

The appellant is under age 65 and was admitted to the SNF on [REDACTED] from the hospital for short term rehabilitation for low back pain. (Exhibit 6, pp. 1, 2, 5, testimony). The appellant was screened clinically eligible for short term care through September 19, 2022. (Exhibit 6, p. 1). The appellant's medical history includes head injury, anemia, major depressive disorder, opioid dependence and viral endocarditis; the appellant endorses active IV drug use. (Exhibit 6, p. 5). The appellant has a history of heroin use/abuse of 30+ years and has attended numerous detox programs and inpatient treatment programs unsuccessfully. (Exhibit 6, p. 17). Prior to her hospitalization, the appellant was living in a homeless shelter. (Exhibit 6, p. 5).

The appellant was discharged from occupational therapy (OT) on August 4, 2022. (Exhibit 6, pp. 20-21). The appellant was discharged from physical therapy (PT) on August 9, 2022. (Exhibit 6, p. 22). The appellant is independent for bathing, dressing, and grooming. (Exhibit 6, p. 20). By 30-day notice of discharge dated August 18, 2022, the nursing facility informed the appellant of its intent to discharge her to her previous residence on [REDACTED], because her health had improved sufficiently so that she no longer needed the services provided by the nursing facility. (Exhibit 6, p. 32). The appellant did not appeal this notice. (Exhibit 5, testimony).

The SNF's administrator submitted into the record a copy of the Smoking Policy Education and Acknowledgment form signed by the appellant on July 12, 2022, which states that the appellant acknowledges being educated on the SNF's smoking policy and understands such policy. (Exhibit 6, p. 29). The SNF also submitted a copy of the Room Entry and Search Acknowledgment Form signed by the appellant on July 12, 2022 which sets forth the policy and procedure for room searches at the SNF. (Exhibit 6, p. 30).

The SNF administrator referred to progress notes in the record and stated that on August 15, 2022, personnel from food services found a fragment of a used crack pipe on the appellant's food tray.

(Exhibit 6, p. 28). On August 24, 2022, a search of the appellant's room was ordered, the appellant signed the consent, and items including a lighter, pack of cigarettes, flushing syringes, scissors, and small baggies with cocaine residue were found and removed from the room. (Exhibit 6, p. 27, testimony). The appellant was re-educated about SNF policy regarding safety. (Exhibit 6, p. 27). The SNF administrator stated that on August 31, 2022, the appellant was noted to be entering other residents' rooms and was redirected and educated on SNF policies. (Exhibit 6, p. 26). The appellant responded that she "did not care about the...policies". (Exhibit 6, p. 26). Later in the morning on August 31, 2022, it was reported that the appellant was acting strangely, and security found two baggie corners, a pair of scissors with burnt ends, and a small plastic container with residual white powder in it during a room search. (Exhibit 6, p. 26). Security also found a burned ball that fell out of the appellant's pillowcase. (Exhibit 6, p. 26). The SNF issued the notice of discharge on September 1, 2022, informing the appellant that she would be discharged to her former place of residence on September 2, 2022 because the safety of individuals in the SNF is endangered due to her clinical or behavioral status. (Exhibits 1, 6, p. 34). Per a Nursing Progress Note dated September 11, 2022, it was noted that a burned glass pipe fell off the appellant's wheelchair on her way to her room. (Exhibit 6, p. 25).

The SNF Administrator testified that the appellant is receiving no skilled nursing services at this time and can do her activities of daily living (ADLs) on her own. The SNF Administrator noted that the appellant's last place of residence is a homeless shelter and that is where the SNF intends to discharge her. The SNF Administrator noted that the appellant's clinical screening is for short term care through September 19, 2022. The Director of Social Services stated that no subsequent clinical screenings were done allowing for additional time. SNF Administrator stated that in light of the recent room searches which revealed smoking materials and drug paraphernalia, the SNF is seeking an earlier discharge date. (Exhibit 5). The SNF Administrator noted that the SNF will provide transportation to the shelter for the appellant.

The SNF Director of Social Services testified that the SNF will assist the appellant with setting up any medically necessary services in the community. The SNF Director of Social Services stated that she provided housing resources to the appellant, such as a list of rooms to rent in the area.

The appellant stated that she is not using or distributing drugs on the property. The appellant noted that she has supervised visits. The appellant noted that she followed up on the list of rooms provided by the Director of Social Services, but the majority were in unsafe, drug infested areas. The appellant noted that she is disabled and is on a housing list. The appellant stated that she has looked for homes on the computer and has rode around looking at places.

The appellant's spouse stated that the appellant has memory issues and if she was acting weird, then she needed medical attention. The appellant's spouse stated that the appellant has issues with her heart and lungs and needs medical attention for these things.

The record was left open for one day to give the SNF Administrator the opportunity to submit a letter from the SNF physician/Nurse Practitioner speaking to the appellant's medical clearance for discharge. On September 15, 2022, the SNF Administrator submitted a letter dated September 15, 2022 from the SNF's Adult Gerontology Primary Care Nurse Practitioner (AGPCNP). (Exhibit 7).

The AGPCNP reiterated the notes in the appellant's medical record, noting that on August 31, 2022, the appellant had two small bags containing white powder that appeared to be illicit drugs. (Exhibit 7). The AGPCNP noted further that the appellant had also been entering other resident's rooms who are suspected to be abusing drugs and that morning was found with cigarettes and a lighter in her room that she tried to hide under her blankets. (Exhibit 7). The AGPCNP wrote that the appellant was walking when she was admitted to the facility but has stopped walking since she was given a wheelchair. (Exhibit 7). The AGPCNP wrote that the appellant is functioning well, she is using a wheelchair without difficulty, she goes downstairs regularly to smoke, and she is currently not receiving skilled services. (Exhibit 7). The AGPCNP noted that physical exam and a review of the appellant's systems were within normal limits. (Exhibit 7). The AGPCNP noted that the appellant is clinically stable and is able to function well in the community; she may be discharged home with medications and services. (Exhibit 7).

Findings of Fact

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

1. The appellant is under age 65 and was admitted to the SNF on [REDACTED] from the hospital for short term rehabilitation for low back pain.
2. The appellant was screened clinically eligible for short term care through September 19, 2022; there are no subsequent clinical screenings extending the time.
3. The appellant's medical history includes head injury, anemia, major depressive disorder, opioid dependence and viral endocarditis; the appellant endorses active IV drug use; the appellant has a history of heroin use/abuse of 30+ years and has attended numerous detox programs and inpatient treatment programs.
4. Prior to her hospitalization, the appellant was living in a homeless shelter.
5. The appellant was discharged from OT on August 4, 2022 and was discharged from PT on August 9, 2022.
6. The appellant is independent for bathing, dressing, and grooming.
7. By 30-day notice of discharge dated August 18, 2022, the nursing facility informed the appellant of its intent to discharge her to her previous residence on [REDACTED], because her health had improved sufficiently so that she no longer needed the services provided by the nursing facility; the appellant did not appeal this notice.
8. The appellant signed the SNF's Smoking Policy Education and Acknowledgment form on July 12, 2022, which states that the appellant acknowledges being educated on the SNF's smoking policy and understands such policy; the appellant signed the SNF's Room Entry and Search Acknowledgment Form on July 12, 2022, which sets forth the policy and procedure for room

searches at the SNF.

9. On August 15, 2022, personnel from food services found a fragment of a used crack pipe on the appellant's food tray.
10. On August 24, 2022, a search of the appellant's room was ordered, the appellant signed the consent, and items including a lighter, pack of cigarettes, flushing syringes, scissors, and small baggies with cocaine residue were found and removed from the room; the appellant was re-educated about SNF policy regarding safety.
11. On August 31, 2022, the appellant was noted to be entering other residents' rooms and was redirected and educated on SNF policies; the appellant responded that she "did not care about the...policies".
12. On August 31, 2022, it was reported that the appellant was acting strangely and security found two baggie corners, a pair of scissors with burnt ends, and a small plastic container with residual white powder in it during a room search; security also found a burned ball that fell out of the appellant's pillowcase.
13. The SNF issued a notice of discharge on September 1, 2022, informing the appellant that she would be discharged to her former place of residence on [REDACTED] because the safety of individuals in the SNF is endangered due to her clinical or behavioral status.
14. On September 11, 2022, it was noted in a Nursing Progress note that a burned glass pipe fell off the appellant's wheelchair on her way to her room.
15. The appellant is receiving no skilled nursing services at this time and can do her ADLs on her own.
16. The SNF will provide transportation to the shelter for the appellant and will assist the appellant with setting up any medically necessary services in the community. T
17. The SNF Director of Social Services provided housing resources to the appellant, such as a list of rooms to rent in the area.
18. The appellant is clinically stable and is able to function well in the community; she is medically cleared for discharge to the community with medications and services.
19. The appellant's physical exam and review of systems were within normal limits.

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)(3) or (4).

130 CMR 610.028(B).

In lieu of the 30-day-notice requirement set forth in 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are considered to be emergency discharges or emergency transfers.

- (1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician.
- (2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.
- (3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.
- (4) The resident has not lived in the nursing facility for 30 days immediately before receipt of the notice.

130 CMR 610.029(B).

If a hearing is requested, in accordance with 130 CMR 610.015(B)(4), and the request is received before the discharge or transfer, then the nursing facility must stay the planned transfer or discharge until five days after the hearing decision.

130 CMR 610.030(B).

The issue on appeal is whether the SNF was correct in issuing the notice of intent to discharge with less than 30 days' notice because the safety of individuals in the nursing facility is endangered by the appellant's behavior and this is documented in the appellant's record. The SNF has provided support for this claim in the hearing record.

The appellant did not follow the SNF Smoking Policy in that a lighter, and cigarettes were found in her room. On August 15, 2022, a fragment of a used crack pipe was found on the appellant's food tray. On August 24, 2022, flushing syringes, scissors, and small baggies with cocaine residue were found and removed from the appellant's room. On August 31, 2022, the appellant was noted to be entering other residents' rooms and was redirected and educated on SNF policies. The appellant responded that she "did not care about the...policies". On August 31, 2022, it was reported that the appellant was acting strangely and security found two baggie corners, a pair of scissors with burnt ends, and a small plastic container with residual white powder in it during a room search. Security also found a burned ball that fell out of the appellant's pillowcase. On September 11, 2022, a burned glass pipe fell off the appellant's wheelchair on her way to her room. The evidence supports that the appellant is using drugs while in the SNF and this puts other residents in danger. The appellant has shown no intention of following the SNF's policies regarding drug use and smoking materials in her room. The appellant's nursing facility record supports that the health and safety of individuals in the nursing facility is endangered by the appellant's actions and thus the nursing facility has met the requirements of 130 CMR 610.028(A).

The second issue is whether the nursing facility has met the requirements of MGL Chapter 111, Section 70E and 42 CFR 483.15(c)(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 483.15(c)(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 nursing facility 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 nursing facility intends to discharge the appellant to a local shelter. The SNF physician has cleared the appellant medically for living in the community. The appellant was homeless and living in shelters prior to her hospitalization and SNF admission. The SNF Director of Social Services provided the appellant with a list of rooms to rent in the area.

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 appellant is receiving no skilled services at this time. The SNF NP noted that the appellant is medically cleared for discharge and does not require skilled nursing facility level of care. The nursing facility involved the appellant, to the extent possible, in discharge planning and the fact that the appellant does not want to go back to the shelter and has not found an alternative place to live does not negate this fact and is out of the control of the nursing facility. The nursing facility's notice of discharge

dated September 1, 2022 meets the requirements of 130 CMR 610.028, 610.029, 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 September 1, 2022 after the 5 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: Respondent: Worcester Rehab & Healthcare Center, Attn: Administrator, 119 Providence St., Worcester, MA 01804