

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	DENIED	Appeal Number:	2208054
Decision Date:	12/13/2022	Hearing Date:	11/10/2022
Hearing Officer:	Kenneth Brodzinski	Record Open to:	11/16/2022

Appearance for Appellant:



Appearance for Nursing Facility:

Attorney Stephanie Tymula



*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:	SNF – Refusal to Readmit/Transfer
Decision Date:	12/13/2022	Hearing Date:	11/10/2022
SNF's Rep.:	Attorney Stephanie Tymula	Appellant's Rep.:	Son/Guardian
Hearing Location:	Quincy		

Authority

This hearing was conducted pursuant to federal law and regulations at 42 U.S.C. §1396r and 42 CFR 483.10-483.206 and Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Gloucester Healthcare (Gloucester) a skilled nursing facility, served Appellant with notice dated October 21, 2022 of its intent to transfer Appellant on the grounds that the facility was going to close (Exhibit A). Appellant filed this appeal in a timely manner on October 28, 2022 (see 130 CMR 610.015 and Exhibit A). Transfer of a nursing-facility patient constitutes valid grounds for appeal (see 130 CMR 610.028(A); 42 CFR Ch. IV, 483.200 et seq.).

Since the request for the hearing was received by the Board of Hearings during the notice period described in 130 CMR 610.015(B), the nursing facility must stay the planned transfer until 30 days after this decision is rendered. While the stay is in effect, the resident shall not be transferred from the nursing facility [see 130 CMR 610.030(A)].

Action Taken by the Nursing Facility

Gloucester notified Appellant that it seeks to transfer her from the nursing facility.

Issue

Whether or not Gloucester can proceed to transfer Appellant pursuant to notice of October 21, 2022.

Summary of Evidence

Both parties appeared by telephone.

The nursing facility (Gloucester) was represented by legal counsel who provided testimony and a post-hearing legal brief (Exhibit C).

Appellant was represented by her son/legal guardian who provided testimony. The son's wife provided a written statement post hearing (Exhibit D).

Counsel for Gloucester testified that the facility issued a "Notice of 30-Day Discharge" dated October 21, 2022 notifying Appellant that the facility intended to move her from Gloucester Healthcare in [REDACTED] to Lee Healthcare in Lee, Massachusetts on the grounds that the Gloucester facility was closing (Exhibit A). Both facilities are owned by the same entity, Next Step Healthcare. Appellant appealed this notice.

Counsel testified that prior to this hearing, on November 2, 2022 Gloucester transferred Appellant from their facility to a local hospital for care due to a decline in Appellant's medical status. Gloucester refused to readmit Appellant from the hospital because Appellant would have been the only resident in the closing facility and because Appellant, through her Conservator, elected to release the bed hold that would have kept the bed for Appellant upon her release from the hospital.

Counsel further testified that the reason Gloucester intended to move Appellant to a sister facility far away in Lee Massachusetts, was because no other female bed was available in the Next Step Healthcare system. Counsel explained that no nursing home outside of the Next Step Healthcare system will admit Appellant because she has no ability to pay the full charge.

According to Counsel, Appellant funded a trust with approximately \$800,000.00. MassHealth determined that this trust was countable for MassHealth eligibility purposes rendering her ineligible for MassHealth long-term care benefits. Counsel provided invoices showing that despite receiving Appellant's monthly Social Security checks, Appellant owes Next Step Healthcare a total of \$594,388.69 for care its facilities (including Gloucester) rendered to Appellant from April 2018 to November 2022 (Exhibit C).

Counsel cited reliance on MassHealth regulations 130 CMR 456.426(B)(C)(D) and (E)

to support the facility's position that because Appellant elected to release her bed hold upon leaving the facility for the hospital, the facility has no further obligation to Appellant and was not required to furnish her with a notice of intent to discharge once she released the bed hold. In the alternative, the facility argues that the notice issued on October 21, 2022 informing Appellant on the facility's intent to transfer her to the facility in Lee Massachusetts on the grounds that the Gloucester facility was closing, satisfies any notice requirement due to Appellant despite her release of the bed hold.

Appellant was represented by her son/guardian who testified that he had no idea why Appellant's conservator chose to release the bed hold at Gloucester. Appellant's son also testified to his understanding that the trustee of the countable trust that Appellant funded is adamant that he will never release any trust funds to pay for Appellant's long-term care needs. Lastly, the son testified that he and the rest the family did not want to see Appellant transferred so far away from her family. The son stated that he believed it would be "the end of her" if she were to be transferred to the facility in Lee.

The record was left open to allow counsel for the facility to file a written brief (Exhibit C). The son was given time to review and file a response if he so wished. While the son did not file a written response, his wife (who was designated as an appeal representative along with Appellant's son) provided a written statement explaining issues with Appellant's conservator and other representatives and possible legal action that might be taken against them (Exhibit D).

Findings of Fact

By a preponderance of the evidence, this record supports the following findings:

1. Gloucester issued a "Notice of 30-Day Discharge" dated October 21, 2022 notifying Appellant that the facility intended to move her from Gloucester Healthcare in [REDACTED] [REDACTED] to Lee Healthcare in Lee, Massachusetts on the grounds that the Gloucester facility was closing (Exhibit A).
2. Both Gloucester and Lee facilities are owned by the same entity, Next Step Healthcare.
3. Appellant appealed the October 21, 2022 notice.
4. Appellant, through her Conservator, elected to release the bed hold which would have kept the bed for Appellant upon her release from the hospital.
5. Through its notice of October 21, 2022 Gloucester intends to move Appellant to a sister facility in Lee Massachusetts because no other female bed was available in the Next Step Healthcare system.

6. No nursing home outside of the Next Step Healthcare system will admit Appellant because she has no ability to pay the full charge.
7. Appellant funded a trust with approximately \$800,000.00.
8. MassHealth determined that this trust was countable for MassHealth eligibility purposes rendering Appellant ineligible for MassHealth long-term care benefits.
9. The Trustee has indicated he will not use trust funds to pay for Appellant's long term care needs.
10. Despite receiving Appellant's monthly Social Security checks, Appellant owes Next Step Healthcare a total of \$594,388.69 for care its facilities (including Gloucester) rendered to Appellant from April 2018 to November 2022 (Exhibit C).
11. Prior to hearing, on November 2, 2022, Gloucester transferred Appellant from their facility to a local hospital for care due to a decline in Appellant's medical status.
12. Gloucester did not issue a separate notice of intent to discharge after Appellant went to the hospital.
13. By the date of this hearing, Gloucester was effectively closed.
14. Appellant's family does not wish Appellant to be transferred to Lee which is 3 hours away from Appellant's family (Exhibit D).

Analysis and Conclusions of Law

The facility acted in accordance with MassHealth regulations in not readmitting Appellant to Gloucester after she chose to release her bed hold (130 CMR 456.425 - 429). Contrary to the facility's position, however, there is nothing in the regulations concerning a bed hold and its release that obviates compliance with regulation 130 CMR 610.028(D) which states:

*As provided in 130 CMR 456.429: Medical Leave of Absence: Failure to Readmit, a nursing facility's failure to readmit a resident following a medical leave of absence will be deemed a transfer or discharge (depending on the resident's circumstances). Upon determining that it will not readmit the resident, the nursing facility **must issue notice** to the resident and an immediate family member or legal representative, if the resident has made such a person known to the facility, in accordance with 130 CMR 456.701(A) through (C), 456.702: Time Frames for Notices Issued by Nursing Facilities, and 130 CMR 610.028 through 610.030.*

(Emphasis supplied).

The regulation requires long-term care facilities to issue a notice of intent to discharge if the facility does not intend to readmit a resident after the resident has been transferred to a hospital. It makes no exception for bed hold releases.¹

Notwithstanding the above, Gloucester has issued a notice of its intent to transfer the Appellant to a sister facility on the grounds that Gloucester was closing (Exhibit A). That notice is still in effect and is the subject of this appeal. A close review of the subject notice reveals that it complies with the controlling regulations at 130 CMR 610.028.

Appellant did not challenge the sufficiency of this notice other than to challenge the location to where Gloucester intends to transfer Appellant. While Lee Massachusetts may be considerably further away from Appellant family than Gloucester, Appellant made no showing that there was any other facility that would be willing to admit Appellant that would be closer to her family. Given that Appellant has no payer source other than a trust administered by a trustee who allegedly refuses to use trust funds to pay for Appellant's care, it is reasonable to believe that no other facility will admit Appellant. Gloucester maintains that the only female bed available in the Next Step Healthcare system is in Lee, Massachusetts. Appellant did not challenge this assertion. Lastly, I find no reasonable basis to conclude that the transfer is unsafe insofar Appellant would be entering another skilled nursing facility. Appellant made no claim that the facility in Lee could not meet her care needs.

The facility may proceed to transfer Appellant to its sister facility in Lee Massachusetts pursuant to the subject notice of October 21, 2022. Thereafter, at an appropriate time, if Next Step Healthcare cares to do so, it can issue a new notice of intent to discharge Appellant from the Lee facility for her failure to pay.

¹ While it may seem odd to have to issue a discharge notice if a resident has released the bed hold, it does make sense that a discharge notice must still issue as it would be the only avenue for a resident to challenge an inaccurate assertion by a facility that he/she had actually released the bed hold. Appellant was not denied the ability to challenge the release of the bed hold here, however, she did not dispute that the bed hold had been released by her Conservator.

Order for the Nursing Facility

Proceed with intent to transfer pursuant to notice of October 21, 2022.

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.

Kenneth Brodzinski
Hearing Officer
Board of Hearings

cc:

[REDACTED]

SNF Representative: Attorney Stephanie Tymula, LTC Matters, 971 Iris Street,
Manchester, NH 03102