

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:

[REDACTED]

Appeal Decision:	Approved	Appeal Number:	2208533
Decision Date:	1/3/2023	Hearing Date:	12/06/2022
Hearing Officer:	Paul C. Moore	Record Closed:	12/23/2022

Appellant Representatives:

[REDACTED]

Nursing Facility Representatives:

Debra Collins, R.N., Director of Nursing;
Natasha Pieciak, Administrator, Mont Marie
Rehabilitation and Health Care Center (both by
telephone)



*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:	Approved	Issue:	Nursing Facility Discharge
Decision Date:	1/3/2023	Hearing Date:	12/06/2022
Nursing Facility Reps.:	Director of Nursing et al.	Appellant Rep.:	Counsel
Hearing Location:	Remote		

Authority

This hearing was conducted pursuant to Massachusetts General Laws (“M.G.L.”) Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

Jurisdiction

Through a 30-Day Notice of Intent to Discharge Resident dated November 16, 2022 (“discharge notice”), Mont Marie Rehabilitation and Health Care Center (“Mont Marie” or “the facility”) notified the appellant that it sought to discharge her effective December 16, 2022 to [REDACTED] because “[she has] failed, after being spoken to by management to follow policies” and “[she has] also failed, after reasonable and appropriate notice to pay for [her stay] at the nursing facility” (130 Code of Massachusetts Regulations (CMR) 610.028; Exhibit 1). The appellant filed a timely appeal with the Board of Hearings (BOH) on November 16, 2022 (130 CMR 610.015(B); 130 CMR 456.702; Exhibit 2). Challenging a notice of transfer or discharge initiated by a nursing facility is a valid ground for appeal to BOH (130 CMR 610.032(C)).

Action Taken by Nursing Facility

The nursing facility notified the appellant that it sought to discharge her to her home due to her failure to follow policies and to pay for her stay at the facility.

Issues

The appeal issues are whether: (1) the facility has valid grounds to discharge the appellant; (2) the discharge notice and patient record meet the regulatory requirements set forth in the Fair Hearing Rules at 130 CMR 610.028 and 610.029; and (3) the facility has provided sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place.

Summary of Evidence

A. Testimony and Documentary Evidence

Ms. Collins, the director of nursing at the facility, testified that the appellant, who is over age 65, was admitted to the facility on [REDACTED] from Bay State Medical Center with wounds, which required treatment. Her medical diagnoses include Type 2 diabetes, stage 3 chronic kidney disease, non-Hodgkin's lymphoma, coronary artery disease, hyperlipidemia, obstructive sleep apnea, congestive heart failure, obesity, asthma, neuropathy and depression. Ms. Collins noted that the appellant has a stage 3 chronic wound on her sacrum that has not fully healed. She ambulates via an electric wheelchair. Ms. Collins testified that the appellant can transfer independently from her wheelchair to the toilet, and asserted that the appellant no longer participates in transfers (Testimony).¹

Ms. Collins stated that the appellant is healthy enough to go home to an apartment she maintains in the community. Ms. Collins noted that the appellant smokes cigarettes outside on the grounds of the facility, but indicated that the facility is a non-smoking facility, which the appellant was made aware of upon her admission. In addition, according to Ms. Collins, the appellant has not paid for her stay at the nursing facility, but is instead paying rent on an apartment in Springfield (Testimony).

The discharge location designated by the facility in the discharge notice is the appellant's apartment, and Ms. Collins noted that the facility's physical therapy staff evaluated the appellant's apartment to assess its accessibility. She noted that the apartment has some "tight quarters," but asserted that with some rearrangement of the appellant's furniture, the appellant could successfully operate her electric wheelchair there. Ms. Collins noted that there is a Hoyer lift in the appellant's apartment should that be needed for her transfers, and added that she has family members who could assist her at home (Testimony).

Ms. Pieciak, the facility administrator, testified that the appellant's stay was initially covered by

¹ The hearing officer noted that the BOH mailed a letter to the facility and to the appellant on November 17, 2022 (Exh. 3), which appraises the facility that documents relevant to the hearing (such as records detailing the non-payment charges and efforts to collect, the most recent plan of care, etc.) were to be submitted to BOH prior to the hearing. The hearing officer noted that he received no such records. Ms. Collins, the nursing director, stated that 76 pages of records were sent to the BOH by fax on December 1, 2022 to 1-617-887-8797. The hearing officer requested that the facility send these records to him by e-mail following the hearing.

Medicare. However, after Medicare stopped paying for her stay, the appellant has incurred an unpaid balance of \$7,873.20. She has been informed repeatedly of this unpaid balance. Ms. Pieciak stated that the appellant was approved for a short-term stay by a written notice from Commonwealth Care Alliance (CCA), which is a dual Medicare-MassHealth program, although Ms. Pieciak did not have the date of that notice. Ms. Pieciak stated that both the facility business office and the corporate owners of the facility, Marquis, have been trying to work with the appellant to set up a payment arrangement (Testimony).

The appellant testified by telephone that she never received a letter informing her of the hearing date. She receives chemotherapy for her non-Hodgkin's lymphoma off-site. She asserted that she reached an agreement with Shana or Shawna in the facility's business office, just before Thanksgiving, to begin paying \$450.00 a month toward her arrearage. She stated that Shana or Shawna was going to send her a written agreement to sign, but Shana or Shawna never did. The appellant stated that this amount was supposed to be debited directly from her checking account beginning in December, 2022 (Testimony).

The appellant lives alone in the community. She used an electric wheelchair in her apartment before she was admitted to the nursing facility. She asserted that she needs personal care attendants (PCAs) to assist her at home. She has had them in the past, but she cannot find any who are currently willing to work with her. She stated that some of the PCAs she worked with in the past were "abusive," stole Oxycontin pills from her home, and broke one of her antique crystal lamps, so she fired them. She asserted that she needs two people to assist her from her bed to a wheelchair, and from her wheelchair to the toilet. The appellant acknowledged smoking cigarettes outside the facility (Testimony).

Ms. Collins asserted that some local Personal Care Management (PCM) agencies are refusing to work with the appellant, due to alleged accusatory behavior, and being non-compliant with her care. Ms. Collins stated that CCA has approved the appellant for home care services (Testimony).

The appellant stated that he has an adult son who is very involved with her care, but he has a "bad back" and cannot assist her with transfers (Testimony).

Ms. Collins averred that the appellant does not always inform the facility staff when she leaves the facility (Testimony).

Ms. Pieciak testified that she did not know whether the appellant made a payment in the month of December, 2022. At the close of the hearing, the hearing officer asked the facility representatives to report back to him by e-mail on December 16, 2022 whether there is an acceptable payment arrangement in place that would render the discharge notice issued to the appellant moot (Exh. 4). The hearing officer apprised the appellant that if the facility did not agree to rescind the discharge notice by on or before December 16, 2022, he would allow the appellant one additional week, or until December 23, 2022, to send him correspondence by e-mail, with a copy to the facility

representatives, stating the reasons she does not believe she can be safely discharged home (*Id.*).²

B. Post-Hearing Submissions

On December 16, 2022, the hearing officer received by e-mail from Ms. Pieciak a copy of the appellant's patient record (including licensed nursing summaries, a completed Management Minutes Questionnaire (MMQ), and various progress notes) (Exh. 7). Also included with this submission, a copy of e-mail correspondence from an individual named "Shana," evidently affiliated with the facility's corporate owners, was included (Exh. 7A). The e-mail, dated December 7, 2022, reads in relevant part:

I spoke with [the appellant], and she agreed to [pay] \$400 a month starting December, but she did tell me she's trying it, and she doesn't know if it can happen monthly. She told me if we don't pull the money on the 3rd there won't be anything left within the week. We are NOT her priority in getting us paid, her rent is \$400 a month, I don't understand what she's using all her money for if we are providing her with room and board.

A payment plan like this can work once a patient is discharged and they are working toward their balance, but she's in house and accruing a larger balance each month. I don't see how and why this is sufficient, I would not even consider it acceptable, we took it because it's better than nothing.

(Exh. 7A)³

The appellant's patient record, submitted by the facility following the hearing, reflects that as of July 22, 2022, the appellant is a two-person assist with bed mobility; a two-person assist with transfers via a mechanical lift; a one-person assist with locomotion; a two-person assist with dressing; a one-person assist for setup with eating; a two-person assist with toileting; a one-person assist with personal hygiene; and a two-person assist with bathing (Exh. 7, p. 29).

Within Exhibit 7, a portion of a facility financial ledger shows that for the period August 1, 2022 through December 1, 2022, the appellant owes the facility \$7,873.20 (Exh. 7B).

Also, multiple social service progress notes about the appellant document that various home care agencies contacted by facility staff reported that they do not have adequate staffing to meet the appellant's needs at home (*see, e.g.*, progress notes of 10/16/22 and 11/01/22, respectively Exh. 7, pp. 15-16).

² On December 13, 2022, during a record-open period, the BOH received fax correspondence from an attorney, Ms. Margolis, purporting to enter an appearance on behalf of the appellant (Exh. 5). By e-mail correspondence on December 14, 2022, the hearing officer notified the appellant's attorney that he would accept supplemental evidence on the appellant's behalf by on or before December 23, 2022 if the facility did not rescind its discharge notice issued to the appellant (Exh. 6).

³ The hearing officer interpreted this e-mail as evidence that the facility would not rescind its discharge notice.

On December 21, 2022, the hearing officer received from the appellant's attorney, by e-mail, a copy of a legal memorandum ("memo") in support of the appellant's argument that the intended discharge is unsafe and inappropriate, which was copied to the facility's administrator (Exh. 8). In the memo, the appellant asserts that she "suffers from both chronic and acute conditions including cancer (lymphoma), chronic pain, congestive heart failure, arteriosclerosis, hyperlipidemia, kidney disease, asthenia, morbid obesity, gout, multiple physical injuries, and mental health concerns, to name a few" (*Id.*, p. 1).

The appellant's attorney correctly asserts that per an October 14, 2022 progress note by a nurse practitioner at the facility, Lea Grippin, the latter documents that the appellant "cannot go home" because "[the appellant is] unable to stand a pivot to the toilet and then back to her wheelchair" (*Id.*, citing to Exh. 7, p. 79).

The appellant's memo also avers that "[n]o in-home, in-person supports adequate to meet her needs are currently available to [the appellant]. Although she is cooperative with all relevant providers in their search for appropriate home service providers, this quest for in-home supports willing to do the necessary tasks to maintain [the appellant's] health has not been fruitful" (*Id.*, p. 2).

The appellant's memo adds that "[the appellant] has continued to pay rent on an apartment in Springfield, Massachusetts, during her stay at [the facility]. The existence of an apartment alone is not sufficient to create a safe and appropriate environment for discharge where that apartment is not suited for the discharged patient's ongoing needs" (*Id.*).

The appellant's memo cites to various state and federal laws and regulations in support of the position that a nursing facility resident may not be discharged until a "safe, orderly and appropriate discharge" plan is in place, and that a planned discharge or transfer of a nursing facility resident must be discussed with the resident "and their legal representative and their next of kin" (*Id.*, pp. 2-3, citing to 130 CMR § 456.701(C) and 940 CMR § 4.09(6)).

The memo also notes that the discharge notice "is impermissibly vague as to the reason for discharge. It asserts that she has 'failed to ... follow policies.' It does not cite the particulars of the policies she has failed to comply with, giving her little to no opportunity to formulate a defense" (*Id.*, p. 3, citing to 130 CMR § 456.701(C)(2)).

Finally, with regard to the issue of the appellant's failure to pay the facility for her stay, the memo avers that "[the appellant] has entered into a payment agreement with the facility and was under the impression that she had made payments of \$400.00 to [the facility] in November and December. She is not certain why these payments appear not to have processed on the ledger as provided by [the facility]. She reserves the right to supplement the present document with bank statements reflecting these payments, which have not yet been received by counsel. It is not feasible to expect an elder on a fixed income to fix an arrearage in a lump sum" (*Id.*, p. 3).

Attached to the appellant's memo, a December 13, 2022 letter from Sarah Long, the appellant's primary care nurse practitioner with CCA, states in pertinent part:

. . . [The appellant] has limited physical mobility and currently requires a 2-person assist with a Hoyer lift for transfers. It would be unsafe for her to discharge home without services in place, as she has no informal supports to assist with ADLs and IADLs. In the past she has had frequent hospital readmissions related to her difficulty caring for herself at home without sufficient home care services. I recommend against discharging her home until she has the appropriate services in place.

(Exh. 8A)

The memo also appends a copy of a portion of a physical therapy evaluation progress note summarizing a safety assessment of the appellant's home conducted by Jonathan Martone, licensed physical therapist, on October 13, 2022, which states, among other things:

[The appellant] was unable to transfer onto and off of the toilet with one assist, and was unable to transfer into and out of bed with one assist. [The appellant] would need two staff members in the home to be safe using a hooyer to transfer. Bathroom was equipped with grab bar, but [the appellant] was unable to stand and pivot with the size of the bathroom and the only angle the [wheelchair] can fit. . . . [The appellant] is unable to get into and out of the tub. . . .

(Exh. 8B)

C. Content of the discharge notice/patient record

The discharge notice at issue in this matter contains: a specific statement of the reason for the intended discharge (that the appellant has failed, after reasonable and appropriate notice, to pay for her stay at the nursing facility), the location to which the appellant is to be discharged, the effective date of the intended discharge, the right of the appellant to request a fair hearing on the intended discharge, the time frame for requesting a hearing, the effect of requesting a hearing as provided for under 130 CMR 610.030 (*to wit*, that the facility cannot discharge the appellant until 30 days after the hearing officer's decision is received), the name of the person at the facility who can answer any questions about the discharge notice and about the right to file an appeal, the name and address of the local legal-services office, the name and address of the local long-term care ombudsman office, and the mailing address of the agencies responsible for the protection and advocacy of mentally ill individuals, and the protection and advocacy for developmentally disabled individuals, respectively (Exhs. 1 & 2).

The discharge notice also asserts that the appellant has "failed, after being spoken to by management to follow policies," without further elaboration (Exh. 1).

The discharge notice contains a non-current address and non-current fax number for the BOH; however, these entries are crossed out, and the correct mailing address and fax number for the BOH are handwritten above (Exh. 2).⁴

The appellant's patient record from the nursing facility contains a progress note dated November 16, 2022 by a licensed social worker, Ms. Gould, documenting the reasons for the appellant's intended discharge (Exh. 7, p. 31).

Findings of Fact

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

1. The appellant is over age 65, and has resided at the facility since [REDACTED] (Testimony, Exh. 7).
2. The appellant was initially admitted to the facility from Bay State Medical Center for wound care (Testimony).
3. The appellant's medical diagnoses include Type 2 diabetes, stage 3 chronic kidney disease, non-Hodgkin's lymphoma, coronary artery disease, hyperlipidemia, obstructive sleep apnea, congestive heart failure, obesity, asthma, neuropathy, depression and a stage 3 chronic wound on her sacrum that has not fully healed (Testimony, Exh. 7).
4. Through a 30-Day Notice of Intent to Discharge Resident dated November 16, 2022, the facility notified the appellant that it sought to discharge her effective December 16, 2022 to [REDACTED] because "[she has] failed, after being spoken to by management to follow policies" and "[she has] also failed, after reasonable and appropriate notice to pay for [her stay] at the nursing facility" (Exh. 1).
5. The appellant requested a fair hearing on this discharge notice in a timely manner (Exh. 2).
6. The facility asserts that that the appellant is healthy enough to go home to an apartment she maintains in the community (Testimony).
7. Despite being informed that the facility is a non-smoking facility, the appellant smokes cigarettes outside on the grounds of the facility (Testimony).
8. For the period August 1, 2022 through December 1, 2022, the appellant has an unpaid balance of \$7,873.20 (Exh. 7B).
9. The appellant ambulates via electric wheelchair (Testimony, Exh. 7).

⁴ The record does not reflect what individual made these corrections, or if the corrections were made before or after the discharge notice was issued to the appellant.

10. As of July 22, 2022, the appellant is a two-person assist with bed mobility; a two-person assist with transfers via a mechanical lift; a one-person assist with locomotion; a two-person assist with dressing; a one-person assist for setup with eating; a two-person assist with toileting; a one-person assist with personal hygiene; and a two-person assist with bathing (Exh. 7, p. 29).
11. Per an October 14, 2022 progress note by a nurse practitioner at the facility, Lea Grippin, the latter documents that the appellant “cannot go home” because “[the appellant is] unable to stand a pivot to the toilet and then back to her wheelchair” (*Id.*, citing to Exh. 7, p. 79).
12. A copy of a portion of a physical therapy evaluation progress note summarizing a safety assessment of the appellant’s home conducted by Jonathan Martone, licensed physical therapist, on October 13, 2022, states, among other things: “[The appellant] was unable to transfer onto and off of the toilet with one assist, and was unable to transfer into and out of bed with one assist. [The appellant] would need two staff members in the home to be safe using a hooyer to transfer. Bathroom was equipped with grab bar, but [the appellant] was unable to stand and pivot with the size of the bathroom and the only angle the [wheelchair] can fit. . . . [The appellant] is unable to get into and out of the tub. . . .” (Exh. 8B).
13. Prior to her nursing facility admission, the appellant lived alone in the community (Testimony).
14. When living in the community, the appellant had hospital admissions resulting from her inability to care for herself at home (Exh. 8A).
15. The appellant’s nursing home stay was initially covered by Medicare (Testimony).
16. Once Medicare stopped paying for the appellant’s stay, the appellant’s Medicare-MassHealth insurance, CCA, approved a short-term stay for the appellant (Testimony).
17. The facility has tried to arrange in-home services for the appellant at her apartment, including PCA services, without success (Testimony, Exh. 7).
18. The appellant asserted that she entered into an agreement with a business office representative, “Shana,” just before Thanksgiving to begin paying \$450.00 per month toward her arrearage (Testimony).
19. The facility administrator was unable to confirm whether any payments were made by the appellant toward her arrearage as of December 16, 2022 (Exh. 7).
20. The discharge notice at issue in this matter contains: a specific statement of the reason for the intended discharge (that the appellant has failed, after reasonable and appropriate notice,

to pay for her stay at the nursing facility), the location to which the appellant is to be discharged, the effective date of the intended discharge, the right of the appellant to request a fair hearing on the intended discharge, the time frame for requesting a hearing, the effect of requesting a hearing as provided for under 130 CMR 610.030 (*to wit*, that the facility cannot discharge the appellant until 30 days after the hearing officer's decision is received), the name of the person at the facility who can answer any questions about the discharge notice and about the right to file an appeal, the name and address of the local legal-services office, the name and address of the local long-term care ombudsman office, and the mailing address of the agencies responsible for the protection and advocacy of mentally ill individuals, and the protection and advocacy for developmentally disabled individuals, respectively (Exhs. 1 & 2).

21. The discharge notice contains a non-current address and non-current fax number for the BOH; however, these entries are crossed out, and the correct mailing address and fax number for the BOH are handwritten above (Exh. 2).
22. The appellant's patient record from the nursing facility contains a progress note dated November 16, 2022 by a licensed social worker, Ms. Gould, documenting the reasons for the appellant's intended discharge (Exh. 7, p. 31).

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

The regulations at 130 CMR 456.002 define a "discharge" as "the removal from a nursing facility to a noninstitutional setting of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual; this includes a nursing facility's failure to readmit following hospitalization or other medical leave of absence." Similarly, 130 CMR 610.004 defines a discharge as "the removal from a nursing facility of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual."

The Nursing Facility Manual regulations at 130 CMR 456.701 provide in relevant part:

Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility

(A) 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

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

(B) 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).

(C) 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. § 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.

(Emphasis added)

The discharge notice at issue in this appeal states two purported grounds for discharge: the appellant has failed to follow policies of the facility, and the appellant has failed after reasonable and appropriate notice to pay for her stay at the facility.

The first ground, failing to follow facility policies, is not a valid ground to discharge a nursing facility resident. It appears that the facility may be alluding here to the appellant's alleged violation of the facility's non-smoking policy. However, without more explanation as to the policies the appellant has allegedly violated, the discharge notice deprives the appellant of due process and does not allow her to respond in a meaningful way to these allegations.

The second ground for discharge, nonpayment of her unpaid balance owed to the facility, is a valid basis to discharge the appellant. The appellant owes the facility over \$7,800.00 and has been informed of her unpaid balance. The appellant asserted she entered into an agreement to start paying down her arrearage, but there is no written agreement in evidence, and there is no record of her having made a payment in the month of December, 2022.

The facility has a right to be paid for the services it has provided to the appellant since August, 2022. The appellant must immediately begin to set up a payment arrangement with the facility if she chooses not to discharge home.

Next, I conclude that the discharge notice issued by the facility to the appellant meets the regulatory requirements set forth at 130 CMR 456.701(C), except that the address and fax number of the BOH were listed incorrectly. A copy of the discharge notice has "crossouts" and handwritten amendments containing the correct address and fax number for the BOH; however, the hearing officer is unable to determine if these corrections were made before or after the discharge notice was issued to the appellant.

Next, the appellant's clinical record contains a progress note by a licensed social worker documenting the reasons for her intended discharge, as required at 130 CMR 456.701(B).

Also relevant to this appeal, an amendment to M.G.L. c. 111, § 70E, which went into effect in November, 2008, states as follows:

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.**

(Emphasis added)

The next issue to be decided is whether the appellant's apartment is a safe and appropriate place for her to be discharged, and whether the facility has provided her sufficient preparation and orientation for this discharge. The facility argues that the appellant can transfer independently from her wheelchair to the toilet, but refuses to do so. I do not agree. The medical record is replete with evidence that the appellant is a two-person assist with bed mobility; a two-person assist with transfers via a mechanical lift; a one-person assist with locomotion; a two-person assist with dressing; a one-person assist for setup with eating; a two-person assist with toileting; a one-person assist with personal hygiene; and a two-person assist with bathing.

The record evidence also contains an evaluation by a physical therapist reflecting that the appellant cannot get into and out of bed with one assist, cannot get on and off the toilet with one assist, and cannot get into and out of the bathtub. Her electric wheelchair fits in her bathroom with considerable difficulty.

In addition, the parties are in agreement that they have been unable to secure adequate personnel for the appellant's home care services, although the parties disagree as to the reasons why.

In sum, the appellant does not have sufficient services in place at home should she be discharged there to ensure she is safe. She is at considerable risk of falls and injuries without persons to physically assist her at home. The record shows she has had hospitalizations in the past when attempting to care for herself at home without adequate assistance.

Based on the above, I conclude that the facility has not provided sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place, in violation of M.G.L. c. 111, § 70E.

For these reasons, the appeal is APPROVED.

Order for Nursing Facility

Rescind discharge notice of November 16, 2022. Do not discharge the appellant under this notice.

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.

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.

Paul C. Moore
Hearing Officer
Board of Hearings

 cc: Natasha Pieciak, Administrator, Mont Marie Rehabilitation and Health Care Center, 36 Lower Westfield Road, Holyoke, MA 01040