

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2209601
Decision Date:	2/3/2023	Hearing Date:	January 17, 2023
	Hearing Officer:	Stanley M. Kallianidis	

Appellant Representative:

Pro Se

Facility Representative:

Christine Papile



***Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street, 6th Floor
Quincy, MA 02171***

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Notice of Threat to Health and Safety of Residents
Decision Date:	2/3/2023	Hearing Date:	January 17, 2023
Facility Rep.:	Christine Papile	Appellant Rep.:	Pro Se

Authority

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

Jurisdiction

In a notice dated November 30, 2022, Medway Country Manor (the facility) planned on discharging the appellant because, "The safety of individuals in the nursing facility is endangered" (Exhibit 1). The appellant filed this appeal in a timely manner on December 28, 2022 (see 130 CMR 610.015 and Exhibit 2). A nursing facility discharge is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by the Facility

The facility plans on discharging the appellant because he is endangering the safety of individuals in the facility.

Issue

Pursuant to 130 CMR 610.028, was the appellant issued a proper notice of discharge regarding his alleged endangerment of the safety of individuals in the facility?

Action Taken by the Facility

The facility plans on discharging the appellant because he is allegedly endangering the safety of individuals in the facility.

Issue

The appeal issue is whether the appellant was issued a proper notice of discharge regarding his alleged endangerment of the safety of individuals in the facility pursuant to 130 CMR 610.028.

Summary of Evidence

A representative from Medway Country Manor testified that the appellant is a 66-year-old male admitted to their facility on July 20, 2022. His admitting diagnoses included Guillain-Barre syndrome, depression, anxiety, and post-traumatic stress disorder (Exhibit 3).

The facility is planning his discharge because he is endangering the safety of individuals in the facility. The facility representative explained that the appellant was found to have a vape pen in his bed on November 26, 2022. In this instance, the vape pen was found to contain nicotine tobacco and was taken away from him. This incident was documented in the appellant's progress notes (Exhibit 3). The facility representative further stated that there was a prior incident as well in which the appellant was found to have a vape pen with marijuana, but this was not documented.

In support of its action to discharge the appellant, the facility referenced an admission agreement dated July 20, 2022 which the appellant signed. According to the agreement, by signing the appellant acknowledged that "Medway Country Manor is a non-smoking facility and that smoking is permitted only in designated smoking areas outside of the facility" (Exhibit 3).

In its November 30, 2022 discharge notice to the appellant, Medway Country Manor indicated that it planned on discharging the appellant because, "The safety of individuals in the nursing facility is endangered" (Exhibit 1). In its notice, the facility listed five different nursing homes as possible discharge locations. These were listed in no particular order and were in the towns of Wrentham, Milford, Milton, and Attleboro (Exhibit 1).

The appellant acknowledged having a vape pen in his bed on November 26, 2022 and he also admitted to having the vape pen a different time. He also stated that he no

longer has the vape pen and has no intention of smoking in the facility in the future. He testified that he did not want to be transferred to a different nursing home. His representative also objected to the planned discharge. She claimed that the appellant was not given sufficient notice of the action and was not properly informed of the hearing.

Findings of Fact

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

1. The appellant was admitted to Medway Country Manor on July 20, 2022 (Exhibit 3).
2. The appellant's admitting diagnoses included Guillain-Barre syndrome, depression, anxiety, and post-traumatic stress disorder (Exhibit 3).
3. The appellant was found to have a vape pen in his bed on November 26, 2022. In this instance, the vape pen was found to contain nicotine tobacco and was taken away from him. This incident was documented in the appellant's progress notes (Exhibit 3).
4. There was a prior incident in which the appellant was found to have a vape pen with marijuana, that was not documented, but which the appellant acknowledged (testimony).
5. According to a signed admission agreement date July 20, 2022, the appellant acknowledged that "Medway Country Manor is a non-smoking facility and that smoking is permitted only in designated smoking areas outside of the facility" (Exhibit 3).
6. In its November 30, 2022 discharge notice to the appellant, Medway Country Manor indicated that it planned on discharging the appellant because, "The safety of individuals in the nursing facility is endangered" (Exhibit 1).
7. According to this discharge notice, the facility listed five different nursing homes as possible discharge locations. These were listed in no particular order and were in the towns of Wrentham, Milford, Milton, and Attleboro (Exhibit 1).

Analysis and Conclusions of Law

130 CMR 610.028(A): Notice Requirements Regarding Actions Initiated by a Nursing Facility:

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 MassHealth agency or Medicare pay for) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

130 CMR 610.028(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;

The nursing facility must meet the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including MGL c.111, §70E, which states in pertinent part that

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.

In the instant case, I have found that the appellant, with a medical history that included Guillain-Barre syndrome, depression, anxiety, and post-traumatic stress disorder was admitted to Medway Country Manor on July 20, 2022. The facility is planning his discharge because he is allegedly endangering the safety of individuals in the facility. The specifics that led to this planned discharge are the appellant's possession of a vape

pen on at least two occasions, one which was documented and the other which the appellant acknowledged. These actions were in violation of a signed admission agreement date July 20, 2022, where the appellant acknowledged that “Medway Country Manor is a non-smoking facility and that smoking is permitted only in designated smoking areas outside of the facility.”

Pursuant to 130 CMR 610.028(C), among other requirements, a facility must indicate the location of discharge to a resident in writing before the action on its discharge notice can take place. With regard to the appellant’s discharge notice, the facility listed five different nursing homes as possible discharge locations. These were listed in no particular order and were in the towns of Wrentham, Milford, Milton, and Attleboro.

I conclude that having multiple possible locations of discharge on a discharge notice cannot possibly comply with the requisite requirements of 130 CMR 610.028(C). Nor can it comply with the “sufficient preparation and orientation” mandate of MGL c.111, §70E. Having five different nursing facilities in four different localities as possible places of discharge is tantamount to having no place of discharge to which a resident could realistically orient and prepare for.

Pursuant to the above-cited regulation, and based on the faulty discharge notice, the facility cannot proceed with this planned discharge of the appellant.

The appeal is therefore approved.

Order for the Facility

The notice to discharge dated November 30, 2022 must be rescinded as discharging the appellant is not authorized at this time.

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 either party disagrees 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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc: Administrator
Medway County Manor Nursing Rehab.
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Medway, MA 02053