

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2300797
Decision Date:	3/13/2023	Hearing Date:	02/17/2023
Hearing Officer:	Casey Groff, Esq.	Record Closed:	2/20/2023

Appearances for Appellant:



Appearances for Nursing Facility:

Biya Paul, Administrator; Denise Kelley,
Regional Business Office Manager; Amanda
DiMartino, Director of Social Work



*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:	3/13/2023	Hearing Date:	02/17/2023
Nursing Facility Reps.:	Biya Paul, Administrator, <i>et. al.</i>	Appellant's Reps.:	Ombudsman
Hearing Location:	Board of Hearings (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 February 1, 2023, the Webster Park Rehabilitation & Healthcare Center (“the nursing facility”) informed Appellant that it sought to discharge him from the facility because he failed, after reasonable and appropriate notice, to pay for services rendered at the facility.¹ See 130 CMR 610.028 and Exhibit 2. On February 1, 2023, Appellant filed a timely appeal of the discharge notice. See 130 CMR 610.015(B) and Exhibit 2. An attempt to discharge a nursing facility resident is valid grounds for appeal. See 130 CMR 610.032(C). At the conclusion of the hearing, the record was left open until February 20, 2023 to submit additional evidence.

Action Taken by Nursing Facility

The nursing facility sought to discharge Appellant because it determined that after reasonable and appropriate notice, he failed to pay, and/or failed to have Medicaid pay, for his nursing facility care.

Issue

¹ The facility also issued a discharge notice to Appellant on January 31, 2023, which was appealed that same day. See Exh. 1. The facility indicated that it had rescinded this notice due to an error and replaced it with the February 1, 2023 discharge notice. As such, the Appellant only sought to address the operative discharge notice, thereby withdrawing his January 31, 2023 fair hearing request.

The issue on appeal is whether the nursing facility met the statutory and regulatory requirements set forth under 130 CMR §§ 610.028, 610.029 and 42 CFR Ch IV, subpart B, 483.12(a) to discharge Appellant from the nursing facility pursuant to its February 1, 2023 discharge notice.

Summary of Evidence

At the hearing, the nursing facility was represented by its administrator, business office manager, and director of social services. Based on testimony and documentary submissions, the nursing facility presented the following evidence: Appellant is over the age of 65 and was admitted to the nursing facility following a methicillin resistant staphylococcus aureus (MRSA) infection and amputation of the right leg below the knee. See Exh. 4, pp. 6, 15. His medical diagnoses include type II diabetes, chronic kidney disease, muscle wasting and atrophy, chronic obstructive pulmonary disease (COPD), obstructive sleep apnea, dysphagia, cognitive communication deficit, atrial fibrillation, and hypertension. Id. He ambulates in a wheelchair but is independent in performing activities of daily living (ADLs). See id. at 6.

The business office manager testified that beginning in November 2022 she informed Appellant that his Medicare and a private insurance benefit plans were only covering a portion of his nursing home care and that he had a co-insurance obligation of \$194.00 per day. See id. at 3; see also Exh. 5 at 3. She further explained that these benefits were set to expire on January 5, 2023, at which point he would be without any payor source. See Exh. 5, p. 3. On November 3, 2022, the business manager presented Appellant with a MassHealth application to ensure he would have coverage once his other payor sources expired. See Exh. 4, p. 3. She informed Appellant that when approved, MassHealth assigns a patient- paid amount (PPA) to the resident, which is comprised of income, less certain allowances. Appellant responded that he would review the application, but he was not going to pay his income to the facility. Id. In subsequent meetings throughout the next two months, Appellant continued to refuse to complete the application, noting that he would not pay income to the facility. See id. During a follow-up meeting on December 16th, the business office manager provided Appellant with an invoice of his accrued coinsurance balance. Appellant refused to pay the bill and refused to complete the MassHealth application. Id. at 4. The business manager informed Appellant that if was not going to pay the facility or obtain a payor source, it would seek to discharge him elsewhere. He was billed again on January 3, 2023 and February 2, 2023. Id. As of the hearing date, Appellant had a total unpaid nursing home bill of \$37,184.50. See Exh. 5, p. 3.

Next, the social worker from the facility testified that since Appellant's admission to the facility, she has been assisting Appellant with his requests for finding alternative placements and independent housing. The social worker explained that prior to his hospitalization, Appellant was living at his sister's apartment, which is not handicap accessible. Once admitted to the facility, Appellant requested to be transferred to a different nursing facility. She sent numerous referrals to other facilities, all of which declined him. Once he became stable for discharge, her efforts have been focused on finding him housing. Appellant insists on living in a private apartment and refuses any group home or shared living set up. Last week, he was accepted into a

private one-bedroom apartment through the veteran's assistance program, CHAMPVA. See Exh. 4, p. 5. However, after visiting the apartment, Appellant declined this option.

On February 1, 2023, the facility presented Appellant with a "30-Day Notice of Intent to Discharge Resident." See Exh. 2. The notice informed Appellant that the facility sought to discharge him to the Pine Street Inn homeless shelter on March 2, 2023 based on the reason that he "failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility." Id. The nursing facility representatives explained that despite all efforts, Appellant refuses to enroll with MassHealth and has rejected all housing options presented. Because of his resistance to all housing options offered, the facility is limited in its discharge location options. Nevertheless, the Pine Street Inn would be an appropriate and safe discharge location given that Appellant is entirely independent with his care and ADLs.

The social worker added that immediately prior to the hearing, she received notice that Appellant was approved for a luxury one-bedroom apartment in the south end of Boston available through section-8 affordable housing. The building is brand new and fully handicap accessible, including elevators and ramps. She explained that some paperwork had to be completed before it became finalized, however, it would likely be available by March 1, 2023. Because the social worker had just received notice, she had not yet communicated this option to Appellant.

Appellant and an ombudsman appeared at the hearing via telephone. Appellant challenged the facility's proposed discharge and explained that he cannot be sent to a homeless shelter. His right leg was recently amputated and although he can perform most ADLs by himself, he ambulates exclusively by wheelchair. Appellant asserted that the Pine Street Inn is not handicap accessible and requires all residents to leave in the morning and return in the evening. Appellant argued that he would have no place to stay during the daytime. The wheelchair he currently uses to ambulate is not his own, but the facility's. He also questioned how he would access and manage his medications while homeless. Appellant testified that has never been homeless before. Appellant explained that he cannot return to his sister's apartment (where he lived prior to this admission) because it lacks a ramp or elevators, and the rooms are too small to fit a wheelchair.

Appellant testified that he declined the CHAMPVA housing option because it was a small apartment with accessibility issues. When he visited the apartment, the ramp was so steep that he had difficulty getting his wheelchair up. When he finally got to the front door of the apartment, he could not maneuver his wheelchair inside.

When asked why he would not complete the MassHealth application, Appellant stated that he would be forced to take out his life insurance policy and would owe all his income to the facility. This would cause him to be stuck at the facility. Appellant testified that he does not want to stay at the nursing home and complained about the quality of care he has received. However, before he can leave, he needs to find suitable housing. Appellant expressed interest in the new apartment option, indicating that he would be inclined to accept based on the description.

The facility was asked if it would consider rescinding the discharge notice given the availability of the new apartment. The facility representatives declined to do so, stating that because Appellant had a pattern of refusing past available housing options, they were not confident as to whether he would accept the new apartment. The facility reiterated that Appellant is independent with ADLs and can manage his medications. According to the administrator, Appellant frequently leaves the facility during the daytime with his friends, so it's not as if he is staying at the facility all day. The social worker also noted that the facility would discharge him with 14-days' worth of medication and schedule an appointment with his physician within seven days. They would also order him a wheelchair through his insurance.

Findings of Fact

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

1. Appellant is a MassHealth member, over the age of 65, and was admitted to the nursing facility following a MRSA infection, amputation of the right leg below the knee, and diagnoses including type II diabetes, chronic kidney disease, muscle wasting and atrophy, COPD, obstructive sleep apnea, dysphagia, cognitive communication deficit, atrial fibrillation, and hypertension.
2. Appellant ambulates by a wheelchair and is independent in performing most ADLs.
3. Beginning in November 2022, the facility business office manager informed Appellant that he had a co-insurance obligation of \$194.00 per day and that his Medicare and a private insurance benefits were set to expire on January 5, 2023, at which point he would be without any payor source.
4. On November 3, 2022, the business manager presented Appellant with a MassHealth application, to which Appellant responded that he would review it, but that he would not pay the facility any of his income.
5. In subsequent meetings with the business office manager over the next few months, Appellant refused to complete the MassHealth application or pay income to the facility.
6. On December 16, 2022, the business office manager presented Appellant with his accrued co-insurance bill, and subsequent updated invoices were sent to Appellant on January 3, 2023 and February 2, 2023.
7. As of January 5, 2023, Appellant has remained at the facility without a payor source.
8. As of the hearing date, Appellant accrued a total unpaid nursing home bill of \$37,184.50 and had not made any payments to the facility for the cost of his care.
9. Since becoming stable for discharge, the facility social worker has assisted Appellant in

finding suitable housing; however, Appellant rejected efforts to find him a group home or shared living set up, and he declined a one-bedroom apartment that was offered to him through CHAMPVA.

10. On February 1, 2023, the facility presented Appellant with a “30-Day Notice of Intent to Discharge Resident” stating that it sought to discharge him to the Pine Street Inn homeless shelter on March 2, 2023 based on the reason that he “failed, after reasonable and appropriate notice, to pay for (or have failed to have Medicare or Medicaid pay for) your stay at the nursing facility.”

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 mirror the federal requirements concerning a resident’s right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in the Nursing Facility Manual regulations at 130 CMR 456.000 et seq. and in the Fair Hearing Rules at 130 CMR 610.000 et seq.

MassHealth regulations at 130 CMR 610.028 set forth the requirements that a nursing facility must meet to initiate a transfer or discharge, and provides in part as follows:

(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.

See 130 CMR 610.028(A) (emphasis added); see also 130 CMR 456.701(A).

When the transfer or discharge is sought due to the circumstances specified in subsections (1) through (5), above, as it is here, the resident’s clinical record must be documented.² See 130 CMR

² When the basis for the discharge is due to reasons stated under subsections (1) through (4), above, the documentation must be made by a physician. However, in this case, where the basis for the discharge is due to Appellant’s failure to pay under subsection (5), above, the regulation simply requires that the clinical record contain

610.028(B)(2).

In this case, the facility demonstrated that Appellant failed to pay for his nursing home care despite being given reasonable and appropriate notice of his payment obligations. The evidence shows that as early as November 2022, Appellant was informed of a \$194.00 per-day co-insurance obligation. At this time, he was also informed that his benefits were due to expire by January, and as such, he would need to apply for MassHealth coverage. For over three months, Appellant rejected continued efforts by the facility to assist him in filing the MassHealth application. As a result of Appellant's refusal to pay his co-insurance obligation and failure to secure a new payor source, he has accrued a substantial nursing home bill totaling \$37,184.50. See Exh. 5, p. 3. As of the hearing date, Appellant had not made a single payment to the facility for the cost of his care. The facility has established proper grounds to discharge Appellant from the nursing facility under 130 CMR 610.028(A)(5), above, and this is documented in his clinical record.

While the facility has established proper grounds to discharge Appellant, it must also comply with all other applicable state laws before it can proceed with the discharge. In addition to the fair hearing regulations cited above, nursing facilities are subject to the requirements set forth in M.G.L. c. 111, § 70E, which states the following:

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 facility proposes to discharge Appellant to a homeless shelter. Appellant has numerous complex diagnoses and is recovering from a recent MRSA infection and right leg amputation. While Appellant is independent in performing most ADLs, he ambulates solely by wheelchair and requires a discharge location that is handicap accessible and can accommodate his physical limitations. The facility has made substantial efforts to secure Appellant with housing options that would meet his needs. If Appellant continues to reject these options, a homeless shelter may indeed become, by default, an appropriate discharge location. However, as of the hearing date, the facility did not demonstrate it provided Appellant with sufficient "preparation and orientation" to ensure a safe and orderly discharge to the designated location. See id. Appellant does not have his own wheelchair as he currently uses one that belongs to the facility. While the social worker indicated one could be ordered through his insurance, the process had not yet been initiated, leaving open questions about when Appellant would have the necessary equipment needed to reside outside of the facility. Moreover, there was no evidence presented as to whether Appellant could attend potential day programs or social services during the daytime when the shelter is not accessible to residents. It is also noted that, as of the hearing date, Appellant was accepted for a new handicap accessible apartment which would provide more comprehensive accommodations than he could

documentation of the basis for the discharge.

receive at a homeless shelter. Given Appellant's physical limitations, the availability of alternative housing, and uncertainties about the proposed discharge plan, the facility has not satisfied the standards outlined in M.G.L. c. 111, § 70E, above. Accordingly, the facility's planned discharge is not authorized at this time. However, if Appellant's balance remains unpaid, the facility may issue a new discharge notice at any time.

For these reasons this appeal is APPROVED.

Order for Nursing Facility

Rescind the February 1, 2023 30-Day Notice of Intent to Discharge/Transfer Resident. The facility may issue a new discharge notice with discharge planning at any time if Appellant's nursing home bill remains unpaid.

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 this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. 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.

Casey Groff, Esq.
Hearing Officer
Board of Hearings

[REDACTED]

[REDACTED]