

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2301621
Decision Date:	4/25/2023	Hearing Date:	04/10/2023
Hearing Officer:	Rebecca Brochstein		

Appearances for Appellant:



Appearances for Nursing Facility:

Scott Brewer, Administrator
Judith Wilde, Social Services Consultant



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

APPEAL DECISION

Appeal Decision:	Approved	Issue:	Nursing home discharge
Decision Date:	4/25/2023	Hearing Date:	04/10/2023
Nursing Facility's Reps.:	Scott Brewer Judith Wilde	Appellant's Reps.:	Appellant [REDACTED]
Hearing Location:	Board of Hearings (Remote)		

Authority

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

Jurisdiction

By a notice dated January 31, 2023, Windsor Skilled Nursing & Rehab Center (the facility) informed the appellant of its intent to discharge him to a hotel (Exhibit 1). The appellant filed a timely appeal on March 1, 2023 (130 CMR 610.615). On March 2, 2023, the Board of Hearings dismissed the appeal for failure to include a copy of the notice to be appealed; the Board later vacated the dismissal and scheduled a hearing for April 10, 2023 (Exhibits 3 and 4). Notification of intent to discharge an individual from a nursing facility is a valid basis for appeal (130 CMR 610.032).

Action Taken by the Nursing Facility

The facility informed the appellant of its plan to discharge him on the basis that his health has improved and he no longer requires nursing facility services.

Issue

The issue is whether the facility is justified in seeking to discharge the appellant, and whether it followed proper procedures in doing so.

Summary of Evidence

The nursing facility administrator appeared at the hearing telephonically along with a social services consultant. He testified that the appellant, who is in his mid-70s, has been a resident of the facility since September 2021. He was originally admitted for treatment of heart failure. The administrator testified that the appellant has now met all of his clinical goals and is safe to be discharged back to the community. Specifically, he stated that the appellant is cognitively intact, can ambulate independently with the assistance of a walker, can drive a car, and has been working as a mechanic. He added that the appellant engages in disruptive behavior (such as unplugging medical equipment) approximately once per month. The administrator stated that the appellant was living in his car prior to his admission and has been using the nursing facility as a housing option.

On January 31, 2023, the facility issued a 30-day notice of intent to discharge the appellant to the Hyannis Plaza Hotel. The administrator testified that the facility is willing to pay for the appellant to stay there for one week, and that the appellant has the income to pay for an extended stay beyond that period. He noted that the facility's responsibility is only to return the appellant to his previous housing environment – his car – and that by paying for a week in a hotel the facility is going a step further.

The facility representatives indicated that the clinical file does contain not a doctor's order confirming the appellant is clinically appropriate for discharge, but stated they are confident the doctor would sign off on it. The facility did not submit a copy of the clinical record into evidence.¹

The appellant appeared at the hearing telephonically along with two advocates.² The appellant testified that since having Covid he has had problems breathing as well as difficulty walking. He stated that he has gone through testing to determine the cause of these ongoing issues. He expressed concern about moving to a hotel with no supports and no food supply. The appellant denied that he has returned to his job as a mechanic, stating that he cannot even pick up a wrench.

The representative from the Moving Forward program testified that in December 2022 the appellant was approved for a MassHealth waiver that would enable him to transition to the community with support services such as a home health aide and a visiting nurse. She stated that if the appellant is discharged to a hotel and then ends up back in his car or in a shelter, the program will not be able to follow him. She stated that the appellant's main obstacle is his lack of housing opportunities in the community; she testified that they have been pursuing housing but that it takes time to secure it.

¹ The social services consultant stated that she attempted to send the record to the Board of Hearings prior to the hearing, but that the fax did not go through. She asked if she could send it electronically following the hearing, and the hearing officer provided an email address for submission. However, nothing was received.

² One of the advocates is a case manager with the Moving Forward program through the Massachusetts Rehabilitation Commission, and the other is a case manager with Community Support Associates.

She added that the appellant has a history of COPD, diabetes, and lung cancer, among other things, and that he relies on a walker to get around.

The case manager from Community Support Associates testified that it can take a year or two for the average person to secure housing. She stated that she initially put the appellant on 100 different waiting lists for public housing in eastern Massachusetts, and then expanded the search so that the appellant is now on 161 different lists. She testified that these lists are “huge” and that there is a lot of waiting involved. In addition, some of the options that arise may not be appropriate for the appellant (such as a building with no elevator).

Findings of Fact

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

1. The appellant, who is in his mid-70s, has been a resident of a nursing facility since September 2021.
2. The appellant has a history of heart failure, COPD, diabetes, and lung cancer. He ambulates using a rolling walker.
3. On January 31, 2023, the facility issued a 30-day notice of intent to discharge the appellant to an area hotel. The basis of the discharge notice is its determination that the appellant’s health has improved sufficiently so that he no longer requires nursing facility services.
4. The facility has offered to pay for the appellant to stay at the hotel for one week.
5. The appellant has been approved for a MassHealth waiver that makes him eligible for community-based services after discharge. The appellant does not currently have housing in the community but is on 161 different public housing waiting lists.
6. The facility has not submitted the appellant’s clinical record into evidence.
7. There is no evidence that the appellant’s physician has endorsed the discharge.
8. The nursing facility has not provided sufficient preparation and orientation to the appellant to ensure that he is discharged to a safe and appropriate location.

Analysis and Conclusions of Law

The requirements for a nursing facility-initiated transfer or discharge are set forth at 130 CMR 456.429, 456.701 through 456.704, and 610.028 through 610.030. The regulation permits transfer or discharge only when one of the following circumstances is met: (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 MassHealth or Medicare pay for) a stay at the nursing facility; or (6) the nursing facility ceases to operate.

In this case, the facility moved to discharge the appellant on the basis that his health has improved sufficiently such that he no longer requires nursing facility services. Under 130 CMR 610.028(B), when discharge is initiated on this basis, the resident's clinical record must be documented by his physician. As the facility has not submitted the clinical record into evidence, it has failed to provide the documentation needed to support the plan for discharge.

Additionally, the facility has not demonstrated that the discharge location – an area hotel – is appropriate for the appellant. Under G. L. c. 111, § 70E, “[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.” Though the parties agree the appellant is safe to leave the nursing facility, there is insufficient evidence that the designated discharge location would be a safe environment for him. The appellant was approved to receive services in the community, suggesting he is not equipped to live without formal supports at this time, and he has persuasively argued that discharge to a hotel would not ensure his access to those supports. Accordingly, there is not an adequate basis to find that the proposed discharge location is “safe and appropriate.”

For the reasons set forth above, the notice of intent to discharge must be rescinded. This appeal is approved.

Order for the Nursing Facility

Rescind the 30-day notice of intent to discharge the appellant.

Implementation of this Decision

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

Rebecca Brochstein
Hearing Officer
Board of Hearings

cc: Administrator
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South Yarmouth, MA 02664