

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision: Dismissed

Appeal Number: 2302782

Decision Date: 6/26/2023

Hearing Date: 06/22/2023

Hearing Officer: Alexis Demirjian

Appearance for Appellant:



Appearance for Respondent.:

David Jasinski, Representative



*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:	Dismissed	Issue:	Nursing Home Discharge
Decision Date:	6/26/2023	Hearing Date:	06/22/2023
Respondent Rep.:	David Jasinski	Appellant's Rep.:	[REDACTED]
Hearing Location:	Quincy Harbor South 3	Aid Pending:	No

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 [REDACTED] 2023, the Respondent informed the resident that it would release the resident to an "appropriate setting" because the resident failed to make payment after reasonable and appropriate notice. (Exhibit 2). The resident filed this appeal in a timely manner on April 6, 2023 (see 130 CMR 610.015(B) and Exhibit 3). A resident may appeal to the Board of Hearings when a nursing facility notifies a resident of a discharge or transfer. (see 130 CMR 610.032 (C)).

Action Taken by New England Sinai Hospital, TCU

New England Sinai Hospital, TCU issued a less than 30-Day Notice of Intent to Discharge Resident (Expedited Appeal) for failure to pay after reasonable and appropriate notice.

Issue

The appeal issue is whether New England Sinai Hospital, TCU complied with regulations in filing the less than 30-day Notice of Intent to Discharge the resident.

Procedural History

A hearing was scheduled in this matter on May 5, 2023. At the appointed time the hearing officer called the facility and was informed by a representative of the nursing home that the resident was refusing to participate in the hearing. See Exhibit 1, p. 13. Accordingly, the hearing officer dismissed the appeal for failure to appear. See Exhibit 1, p. 8.

On May 10, 2023, the resident requested that the dismissal be vacated because she was not brought to the hearing room on her unit, the resident further stated that she requires a flatback wheelchair and oxygen and requires assistance to move about the facility. On May 16, 2023, the Director of the Board of Hearings vacated the dismissal based on good cause and it was rescheduled for June 8, 2023. See Exhibit 1, p. 4. The June 8th hearing was rescheduled due to the unavailability of the resident's representative. See Exhibit 1, p. 3.

The matter was rescheduled and heard on June 22, 2023. See Exhibit 1, p. 1. At the request of the resident and her representative, an additional representative attended the June 22, 2023 hearing. See, Exhibit 4.

Summary of Evidence

The Respondent representative appeared via telephone and reported that the resident had been refusing to participate in the MassHealth long-term care application process and had been provided a bill for payment for services rendered. In response to the resident's purported failure, the facility issued a less than 30-day Notice of Intent to Discharge.

After serving the notice of discharge, the facility then went to court and sought an emergency appointment of a conservator. The emergency order for conservatorship was granted, and the resident now has a conservator in place. The facility did not make the conservator aware of the pending 30-day notice of intent discharge or the BOH hearing. It was further noted that the conservator is in the process of completing the resident's MassHealth application for long-term benefits.

The resident and her representatives noted several deficiencies in the Notice of Intent to Discharge, including the failure to list a location for the resident's discharge and failure to copy the resident's representative on the notice.

After discussing the deficiencies in the notice and the pending MassHealth application, the facility agreed to rescind the [REDACTED] 2023 notice of discharge.

Findings of Fact

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

1. The appellant is a resident of the facility. (Testimony and Exhibit 3).
2. On [REDACTED] 2023, MassHealth issued a notice stating that they intended to discharge the resident for failure to pay for her stay at the facility after reasonable and appropriate notice. (Testimony and Exhibit 3).
3. The notice stated that the facility was seeking to discharge the resident to an “appropriate location,” and failed to list an actual location where they planned to discharge the resident. (Id.)
4. The notice does not include the name or address of the resident’s representative on the notice. (Exhibit 2).
5. The facility did not notify the court appointed conservator about the pending notice of discharge or the hearing before the Board. (Testimony).
6. The facility has rescinded the [REDACTED] 2023 notice of intent to discharge and there is no pending order of discharge. (Testimony).

Analysis and Conclusions of Law

In the instant case, the notice was rescinded, and we do not need to address the merits of whether the notice was sufficient. However, the facility must be aware that pursuant to M.G.L.ch. 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.

A notice that states that a resident is to be discharged to an “appropriate setting” is woefully inadequate and underscores that the facility did not engage in proper discharge planning to ensure that the resident moves from the facility to a safe and appropriate setting.

If New England Sinai Hospital Transition Unit issues a new notice, the resident shall have full rights to appeal any the new notice to the Board of Hearings consistent with 130 CMR 610.015 (F).

As the issue of the [REDACTED] 2023, Less than 30-day Notice of Intent to Discharge has been resolved, the appeal is DISMISSED.

Alexis Demirjian
Hearing Officer
Board of Hearings

Cc:

[REDACTED]