

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2303612
Decision Date:	5/12/2023	Hearing Date:	05/05/2023
Hearing Officer:	Christine Therrien		

Appearance for Appellant:



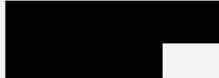
Appearance for the Nursing Facility:

Elisabeth Wolf, Administrator; Michelle Francis, Social Worker; Kelly Lincoln, Business Office Manager; Cheryl Maurer, Director of Therapy Services; Patricia Ricarte, Unit Manager; Heather Brawn, Case Manager; Kim Norton, Physician's Assistant



*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:	Denied	Issue:	NF Discharge
Decision Date:	5/12/2023	Hearing Date:	05/05/2023
Nursing Facility's Rep.:	Elisabeth Wolf, Administrator; Michelle Francis, Social Worker; Kelly Lincoln, Business Office Manager; Cheryl Maurer, Director of Therapy Services; Patricia Ricarte, Unit Manager; Heather Brawn, Case Manager; Kim Norton, Physician's Assistant	Appellant's Rep.:	
Hearing Location:	Tewksbury MassHealth Enrollment Center - Telephonic		

Authority

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

Jurisdiction

The appellant received a Notice of Intent to Discharge Resident with Less than 30 Days' Notice (Expedited Appeal) dated 5/2/23. The notice stated that St. Patrick's Manor ("the skilled nursing facility" or "the facility") seeks to discharge the appellant to his residence on 5/5/23. The notice indicates the reason for the discharge is that "the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility" (Exhibit 1). The appellant filed this timely appeal on 5/2/23 (130 CMR 610.015(B); and Exhibit 2). Discharge of a Nursing Facility patient is valid grounds for appeal (130 CMR 610.029; 42 CFR Ch IV §483.200 et seq.).

Action Taken by MassHealth

The skilled nursing facility intends to discharge the appellant from the facility.

Issue

Is the planned discharge correct pursuant to 130 CMR 610.029?

Summary of Evidence

The appellant received a “Notice of Intent to Discharge Resident with Less than 30 Days’ Notice” dated 5/2/23 (Exhibit 1). The NF submitted the appellant’s clinical record from the facility into evidence (Exhibit 4). The Director of Rehab. testified that the appellant was admitted to the facility on [REDACTED]. The Director of Therapy Services testified that the appellant was admitted to the facility due to a syncopal episode and orthostatic hypotension (Exhibit 4, p. 2-3). The Director of Therapy Services testified that the appellant was in a car accident and has been in and out of the hospital since then due to an injury and that he had a fall that preceded his admission.

The Director of Rehab. testified that the appellant has achieved all goals and no longer meets the criteria for a skilled nursing facility. The Director of Rehab. testified that the appellant is independent in eating, oral hygiene, dressing, toileting hygiene, and toilet transfers. The Director of Rehab. testified that the appellant can perform bathing tasks with supervision using a chair and is independent with light IADLs such as taking food out of the refrigerator and using a microwave (Exhibit 4, p. 53). The appellant’s discharge summary states the facility recommends home health services and an assessment for the safety of his home environment and support for IADLs (Exhibit 4, p. 53). The Dir. of Rehab. testified that the plan was to taper the appellant off pain medications so he can transition to home, but the appellant was tapered off and then the PA ended up changing the dose to a lower amount. The Social Worker testified that the NF would ensure appropriate home care services are put in place.

The appellant’s representative testified that the appellant does not want to leave because he is still feeling considerable pain and his mobility progress has declined. The appellant’s spouse is at home and she has dementia. The appellant’s spouse is not helpful and cannot be left alone. The appellant’s representative testified that the appellant is concerned that when the spouse’s home help leaves at the end of the day, he will be responsible for her overnight and he does not feel he can do that yet. The appellant’s representative testified that the appellant’s spouse has had extra care while the appellant has been at the NF. The appellant’s representative testified that the appellant is concerned he will soon run out of money to cover the cost of his spouse’s home care. The appellant’s representative testified that the appellant has not applied for the Personal Care Attendant program through MassHealth. The appellant testified that he is not back to where he was before the car accident in March.

Findings of Fact

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

1. The appellant received a “Notice of Intent to Discharge Resident with Less than 30 Days’ Notice” dated 5/2/23 (Exhibit 1).
2. The NF submitted the appellant’s clinical record from the facility into evidence (Exhibit 4).
3. The appellant was admitted to the facility on [REDACTED]
4. The appellant was admitted to the facility due to a syncopal episode and orthostatic hypotension (Exhibit 4, p. 2-3).
5. The appellant was in a car accident and has been in and out of the hospital since then due to an injury and he had a fall that preceded his admission.
6. The appellant has achieved all goals and no longer meets the criteria for a skilled nursing facility.
7. The appellant is independent in eating, oral hygiene, dressing, toileting hygiene, and toilet transfers.
8. The appellant can perform bathing tasks with supervision using a chair and is independent with light IADLs such as taking food out of the refrigerator and using a microwave (Exhibit 4, p. 53).
9. The appellant’s discharge summary states the facility recommends home health services and an assessment for the safety of his home environment and support for IADLs (Exhibit 4, p. 53).
10. The appellant’s pain medication was tapered down to a low dose.
11. The NF will ensure appropriate home care services are put in place.
12. The appellant’s spouse is at home and she has dementia.
13. The appellant has not applied for the Personal Care Attendant program through MassHealth.

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.

For the purposes of this decision, the definitions found in 130 CMR 456.402 apply:¹

“Nursing facility” - an institution or a distinct part of an institution that meets the provider-eligibility and certification requirements of 130 CMR 456.404 or 456.405. For requirements related to the transfer and discharge of residents, the term nursing facility also includes a nursing facility participating in Medicare, whether or not it participates in MassHealth.

“Discharge” - 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.

“Transfer” — movement of a resident from:

- (1) a Medicaid- or Medicare-certified bed to a noncertified bed;*
- (2) a Medicaid-certified bed to a Medicare-certified bed;*
- (3) a Medicare-certified bed to a Medicaid-certified bed;*
- (4) one nursing facility to another nursing facility; or*
- (5) a nursing facility to a hospital, or any other institutional setting.*

A nursing facility’s failure to readmit a resident following hospitalization or other medical leave of absence, resulting in the resident being moved to another institutional setting is also a transfer. Movement of a resident within the same facility from one certified bed to another bed with the same certification is not a transfer.

The appellant is challenging the nursing facility’s attempt to discharge him to his home via its notice dated 5/2/23 (Exhibits 1 and 130 CMR 456.402).

The guidelines that apply in a determination of whether the appellant can be so discharged are found in 130 CMR 456.701 of the MassHealth Nursing Facility Manual. This section of the regulations strictly and specifically lists the only circumstances and conditions that allow for the transfer or discharge of a resident from a nursing facility and the requirements of the relevant notice – if these requirements are not met, the facility must permit the resident to remain in the facility.

The relevant portions of the regulation at 130 CMR 456.701 read as follows:

456.701: 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;**

¹ The regulatory language in the MassHealth Nursing Facility Manual has identical (or near-identical) regulatory counterparts within the Commonwealth’s Fair Hearing Rules under 130 CMR 610.000 et seq., as well as federal regulations found under 42 CFR 483.000 et seq. As to this part of the regulatory law, the regulations in 130 CMR 610.028 and 42 CFR 483.12(a)(2) are identical to that found in 130 CMR 456.402. This appeal decision will hereafter make all further regulatory references only to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000 unless other regulatory references are noted and appropriate.

- (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 ...

(Emphasis added.)

The facility is seeking to issue a discharge notice based on the grounds that the appellant's health has improved sufficiently so that the appellant no longer needs the services provided by the nursing facility. The 5/2/23 "Notice of Discharge/Transfer" found in Exhibit 1 asserts the circumstances identified at 130 CMR 456.701(C)(2) and complies with the notice requirements set forth in 130 CMR 456.701(C). Therefore, the appellant received adequate and actual notice of the planned discharge.

The first issue is whether the appellant's discharge is appropriate because his health has improved sufficiently so that the appellant no longer needs the services provided by the nursing facility. The discharge summary and testimony indicate the appellant is independent in eating, oral hygiene, dressing, toileting hygiene, and toilet transfer, performs bathing tasks with supervision using a chair, and can perform light IADLs. Further, the Director of Rehab. testified the appellant is eligible for discharge because he no longer meets the criteria for an SNF. There is sufficient evidence provided that the appellant's health has improved sufficiently so that he no longer needs the services provided by the facility.

The second issue is whether the nursing facility has met 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 went into effect in November of 2008. The key paragraph of that statute, which is directly relevant to this appeal, reads 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 notice of discharge lists the appellant's discharge location as his home. Based on the credible testimony of the Director of Rehab. and the Social Worker, the nursing facility has met its burden of providing sufficient preparation and orientation to the resident to ensure safe and orderly discharge from the facility and thus has complied with MGL c.111, §70E. The appellant did not provide any evidence to prove discharge to his home would not be a safe and appropriate place. Therefore, the nursing facility's notice of discharge dated 5/2/23 meets the requirements of MGL c.111, §70E.

Based on the record and the above analysis, the nursing facility has valid grounds to discharge the appellant per its notice dated 5/2/23. The appeal is thus DENIED.

Order for Nursing Facility

The nursing facility may proceed with the notice of discharge. Pursuant to 130 CMR 610.030(B) and 130 CMR 456.704(B), the appellant may not be discharged any earlier than 5 days from the date of this decision.

Implementation of this Decision

If this nursing facility fails to comply with the above order, 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.

Christine Therrien
Hearing Officer
Board of Hearings

cc:

St. Patrick's Manor, Attn: Administrator, 863 Central Street, Framingham, MA 01701.