

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2304546
Decision Date:	7/3/2023	Hearing Date:	06/20/2023
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:

Pro se



Appearance for Nursing Facility:

Via telephone for Heritage Hall South:

Kevin Kaczynski, Administrator

Jordanne Henry, Social Worker



*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:	Nursing Facility Discharge
Decision Date:	7/3/2023	Hearing Date:	06/20/2023
Nursing Facility's Rep.:	Kevin Kaczynski; Jordanne Henry	Appellant's Rep.:	Pro se [REDACTED]
Hearing Location:	Quincy Harbor South Remote	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 30-Day Notice of Intent to Discharge Resident dated [REDACTED] 2023, Heritage Hall South (hereinafter, "the facility") informed the appellant of its intent to discharge her on [REDACTED] 2023 because she failed, after reasonable and appropriate notice, to pay for (or has failed to have Medicaid or Medicare pay for) services rendered at the facility (see 130 CMR 610.028 and Exhibit 1). The appellant filed this appeal in a timely manner on June 5, 2023 (see 130 CMR 610.015(B) and Exhibit 2). Notification of intent to discharge or transfer an individual from a nursing home facility is a valid basis for appeal (130 CMR 610.032).

Action Taken by Nursing Facility

The facility informed the appellant of its intention to discharge her due to her failure to pay for her stay.

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 appellant appeared at hearing via telephone along with her representatives, an ombudsman and a nursing home transitional advocate. The nursing facility appeared at hearing via telephone and was represented by an administrator and social worker.

The nursing facility testified as follows: the appellant entered the facility on [REDACTED] 2022. She has MassHealth coverage but was denied long-term care benefits because she was not clinically eligible. The appellant has had no payor source since March 9, 2023, when her short-term skilled nursing coverage ended. On [REDACTED] 2023, the facility issued the 30-day Notice of Intent to Discharge due to the appellant's failure to pay. The proposed discharge location is the appellant's sister's house, which the appellant told the facility was a place she could safely go. The appellant is primarily independent with her activities of daily living (ADLs) and walks with a rolling walker. She has no skilled nursing needs. The proposed discharge location is a safe place for her.

The facility's social services has also been working with the appellant to try to find housing, but so far they have been unsuccessful. The facility's social services and business office have had ongoing conversations with the appellant regarding her bill and the cost per day for room and board. She has been considered private pay since March 10, 2023, when she lost her payor source. The business office has been sending her bills and informing her of her balance since then. After hearing, the facility provided a copy of the billing statements for April, May, June, and July to all parties via email.¹ The latest statement, dated July 1, 2023 and sent to the appellant on June 13, 2023, reflects a current balance of \$64,512.00.

The appellant's representatives stated that the appellant had a short-term skilled nursing screen that covered the time through April 27, 2023, not March 9, 2023. On that date, the appellant also had a subsequent clinical screen for long-term care coverage which was denied and is currently under appeal with a decision due on August 14, 2023. The appellant stated that her sister will not accept her at her house any longer, even though it would be a safe place for her and physically she is capable of living in the community. She explained that she lived with her sister and her sister's husband prior to getting sick and entering the facility. Her sister's husband no longer wants her in the home around their children due to her medical condition. She is working on housing and has several applications pending. The appellant's representative explained that some of the housing

¹ The statements are dated April 1, 2023, May 1, 2023, June 1, 2023, and July 1, 2023 and were sent to the appellant on March 14, 2023, April 12, 2023, May 10, 2023, and June 13, 2023, respectively.

authorities she has applied to are considering her outstanding nursing facility bills as non-payment of rent which is preventing the appellant from getting into emergency housing. They stated that the nursing facility bills should be considered medical bills and they are working with fair housing attorneys to address that issue.

The facility responded that the last date of coverage it has records for is March 9, 2023. It has had no payments since that date and nothing has come up in the system since then, which is why the appellant has been considered private pay since March 10, 2023. In the documentation provided after hearing, there is a notice from the appellant's insurance plan, BeHealthy, dated March 8, 2023 that informed the appellant it could not approve her continued stay because it determined the appellant did not meet the plan's medical criteria/guidelines for skilled or custodial level of care. It stated that the appellant participated in physical and occupational therapy and she was independent with most ADLs, but required some help (25% help from a caregiver) with bathing and supervision with moving in bed. The appellant has not encountered any new problems and is medically stable. Based on a review of her medical records, it is safe for the appellant to discharge to a lower level of care. The April 27, 2023 screen conducted by the local senior services agency determined that the appellant is not clinically eligible for long-term care services because nursing facility services are not medically necessary and her medical needs can be met in the community.

In an email provided to all parties after hearing, the appellant's ombudsman stated that he confirmed with the senior services agency that there was a clinical MassHealth screen for short-term skilled nursing facility that covered the time from February through April 30, 2023, not April 27, 2023, which was the date of the latest screening. He has spoken both with the facility and the assessing nurse's supervisor to ensure that the document is received by the facility. This should change the appellant's bill since she should have coverage through April 30, not March 9. The ombudsman also argued that as July has not yet been reached, it is not appropriate to include the July statement as part of her failure to pay.

Findings of Fact

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

1. The appellant was admitted to the facility on [REDACTED] 2022 and there have been no payments made since March 9, 2023 (Testimony and Exhibit 5).
2. On [REDACTED] 2023, the facility issued a Notice of Intent to Discharge because the appellant failed, after reasonable and appropriate notice, to pay for (or has failed to have Medicaid or Medicare pay for) services rendered at the facility (Testimony and Exhibit 1).
3. The proposed discharge location is the appellant's sister's house, which was a location chosen by the appellant (Testimony and Exhibit 1).

4. The appellant's sister's house is a safe discharge location; however, the appellant states she is no longer welcome there (Testimony).
5. The appellant has no skilled nursing needs, is primarily independent with her ADLs, and uses a rolling walker (Testimony).
6. The April 27, 2023 screen conducted by the local senior services agency determined that the appellant is not clinically eligible for long-term care services because nursing facility services are not medically necessary and her medical needs can be met in the community
7. The facility has provided the appellant with billing statements (Testimony and Exhibit 5).
8. The facility's social services has worked with the appellant on finding housing, but without success as of the date of hearing (Testimony).

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. (See 130 CMR 610.028(A), emphasis added)

Additionally, pursuant to 130 CMR 610.028(B),

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 610.028(A)(1) through (5), the resident's clinical record must be documented. The documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 610.028(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 610.028(A)(4).

In this case, the facility is seeking to discharge the appellant for failing to pay for her stay at the facility. The facility notified the appellant of the debt owed to the facility by both providing billing

statements to the appellant and through ongoing conversations between the business office, social services, and the appellant. While it appears that the appellant may have had a payor source through April 30, 2023, not March 9, 2023 as presented by the facility, she has still not made any private payments and remains without a payor source. The appellant acknowledged that she has not paid but argued that she is still looking for suitable housing. Additionally, her representatives pointed out that the issue of her clinical eligibility has been appealed; however, no one disputed that she does not have any skilled nursing needs, is primarily independent with her ADLs, and could safely live in the community. Through its testimony and documentation, the facility has sufficiently demonstrated that the appellant has failed to pay for her stay at the facility.

In addition to the MassHealth-related regulations discussed above, the nursing facility also has an obligation to comply with all other applicable state laws, including M.G.L. c.111, §70E, which went into effect in November of 2008. The key paragraph of that statute provides 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.

The facility has proposed a discharge to the appellant's sister's home, which was suggested by the appellant. While it may not be an ideal family situation at this time, the proposed discharge location is safe and appropriate. Through its testimony and documentation, the facility has demonstrated that the appellant is primarily independent with her ADLs, does not require any skilled nursing care, and can safely live in the community. Social services has been engaged with the appellant in discharge planning and finding housing. The facility has demonstrated that it has provided sufficient orientation and preparation to ensure a safe and orderly transfer.

For these reasons, the appeal is denied.

Order for Nursing Facility

Proceed with the planned discharge no less than 30 days after the date 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.

Alexandra Shube
Hearing Officer
Board of Hearings

CC:

[REDACTED]

Heritage Hall South, Attn: Kevin Kaczynski, Administrator, 65 Cooper Street, Agawam, MA 01001

[REDACTED]