

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2305062
Decision Date:	6/30/2023	Hearing Date:	06/27/2023
Hearing Officer:	Alexandra Shube		

Appearance for Appellant:

Via telephone:



Appearance for Nursing Facility:

Via telephone for The Wakefield Center:

Christine Cohane, Director of Admissions

Dr. Yomasi, Medical Director

Rose Juko, Director of Nursing

Zachary Wilkins, Administrator

Kevin Bishop, Administrator in Training

Kristin Neidig, Program Director of Memory
Care Unit



*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 Transfer, Expedited
Decision Date:	6/30/2023	Hearing Date:	06/27/2023
Nursing Facility's Rep.:	Christine Cohane, et al	Appellant's Rep.:	Wife/HCP
Hearing Location:	Springfield MassHealth Enrollment Center 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 Transfer Resident dated [REDACTED] 2023, [REDACTED] Center (hereinafter "the facility") informed the appellant of its intent to transfer him to [REDACTED] Hospital on [REDACTED] 2023 (Exhibit 1).¹ The appellant filed this appeal in a timely manner on June 21, 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 transfer him.

¹ The facility provided a standard 30-day notice; however, pursuant to 130 CMR 610.029(D), appeals of discharges and transfers listed in 130 CMR 610.029(B) and (C) are handled under the expedited appeals process described in 130 CMR 610.015(F).

Issue

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

Summary of Evidence

The nursing facility appeared at hearing via telephone and was represented by the following individuals: director of admissions; medical director; director of nursing; administrator; administrator in training; and program director of the memory care unit. The appellant was represented at hearing by his wife and healthcare proxy, who appeared via telephone.

The facility testified as follows: the appellant was admitted to the dementia unit of the facility on [REDACTED] 2023 from an assisted living facility. He has advanced dementia, is non-verbal, and not easily redirected. Upon admission, he exhibited pacing, intrusive wandering, and pushing and carrying items such as trash cans, laundry bins, and chairs. The facility immediately put in a behavior plan. On [REDACTED], 2023, the appellant was observed pushing another resident onto the floor. That resident sustained a laceration on their head and required staples. As a result of the incident, the appellant was hospitalized on [REDACTED] 2023 through [REDACTED] 2023. The discharge paperwork from the hospital noted that as of [REDACTED] 2023 the appellant was cleared to go to an inpatient geriatric psychiatric facility because of his advanced dementia with behavioral disturbances. No bed was found and the appellant was re-admitted to the facility on [REDACTED] 2023. Upon his return to the facility, he had two new psychiatric medications that had been started at the hospital, as well as some other new, non-psychiatric medications. His behavioral issues continued at the facility where he was under the care of the facility's psychologist and the psychiatric nurse practitioner.

On [REDACTED] 2023, the appellant pushed another resident in the hallway. This incident was witnessed by a staff member. The resident sustained head and facial injuries and had to be sent to the emergency room. The injured resident had a large lump on their head and a contusion around their eye and had to undergo neurological testing. The appellant was sent back to the psychiatric unit at the hospital for evaluation after the incident on [REDACTED], 2023, the date the facility issued its notice of intent to transfer. The appellant remains at the hospital where they have adjusted his medications again.

The facility seeks to transfer the appellant to the hospital for his welfare and because his needs cannot be met at the facility and the safety of individuals in the facility is endangered. The facility explained that the dementia unit currently has 44-45 patients and can have up to 50. The residents are all frail and fragile and at risk with the appellant residing there. The extent of the appellant's dementia is significant, and he can snap at any moment, putting other residents at risk. He has already injured two residents and has been implicated in other incidents. Those incidents were not

observed by staff members, but he was identified by other residents as allegedly going into their rooms, taking items, and one time, grabbing a resident's arm.

The facility's medical director stated that it can take a few days for a hospital to titrate the appellant's medications. She acknowledged the difficulty of caring for someone with dementia, but explained that the appellant needs a higher level of care than the facility can provide in order to keep him and other residents safe. It is not prudent to keep him at the facility while his medications are being adjusted. The facility recommends he enters a geriatric psychiatric facility where they can observe him and adjust his medications as needed. She explained that an acute care facility is very different from a long-term care facility where they do not have the capability to adjust medications all the time.

The appellant's wife testified that she is very involved with the appellant and his care at the facility. She is there every day because she knows he is a lot of work. On the day of the first incident, she had left the facility for the evening and had been home only 15 minutes when the facility called and said he was on the way to the hospital because he had pushed someone. She stated that when she was there that evening, an aide was asleep and blasting music. She felt that if that aide were awake and doing their job, this incident would not have happened. It took the hospital two days to adjust his medications, but the adjustment made a difference in his behavior. The appellant likes to walk around the facility all day, usually totaling about 5 miles. He likes to walk around the dining room and move the chairs and tables around, which is good because it tires him out. She stated that she's observed many of the residents taking things out of rooms. They all have dementia and are not reliable reporters of events. She believes one of the pushing incidents occurred because the other resident believes the appellant is her spouse and she went to put her arms around him and he pushed her away. He has good balance, especially compared to the other residents, and is physically healthy. He is only [REDACTED] years-old and could live a long time. The appellant's wife stated that the hospital cleared the appellant on [REDACTED] 2023, but he has remained there.² If he is not allowed back at the facility, she does not know where he can go and she is concerned about who will pay for the hospital stay now that he has been medically cleared. There are not any available geriatric psychiatric beds. At the hospital, the appellant's wife has been told that her husband is wonderful, calm, and probably just needed his medications adjusted. He had previously been at the Lawrence Memorial geriatric psychiatric unit for three months without any incidents.

The appellant is currently still in the hospital and on [REDACTED] 2023, the facility issued a Notice of Intent Not to Readmit Resident Following Hospitalization or Other Medical Leave of Absence from the Facility with Less than 30 Days' Notice (Expedited Appeal), which has not been appealed.³ The

² Neither the facility nor the appellant's wife had any records from the appellant's current hospital stay.

³ This notice was provided to the Board of Hearings via fax by an administrator at [REDACTED] Hospital on [REDACTED], 2023. The administrator stated the following in her fax coversheet: "[The Appellant] was given a 30 day notice of discharge on [REDACTED]. An appeal was filed and there is a hearing scheduled for Tuesday 6/27/23. I received the Notice of Intent Not to Readmit from the facility via fax today. [The appellant's wife] who is his activated surrogate

reason for the decision not to readmit was identical to that of the Notice of Intent to Transfer: the appellant's needs cannot be met at the facility; transfer is necessary for the appellant's welfare; and the safety of individuals in the facility is endangered.

The facility provided documentation including the following: progress note dated [REDACTED] 2023 from the appellant's physician at the facility (the same medical director who appeared at hearing); hospital discharge paperwork from his first hospital stay [REDACTED] 2023 – [REDACTED] 2023; a behavioral care plan for the appellant; and clinical progress notes. The physician's [REDACTED] progress note indicates she had an "extensive conversation with ED provider and psychiatry regarding intermittent behavioral manifestation at the facility and concern for safety of other residents that patient will benefit from a geropsych facility once stable. Currently undergoing medication adjustment. Patient remains confused agitated on a 1-1."

Findings of Fact

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

1. The appellant is over the age of 65 and was admitted to the nursing facility's dementia unit on [REDACTED] 2023 but has been hospitalized since [REDACTED] 2023 (Testimony and Exhibits 4 and 5).
2. On [REDACTED] 2023, the facility issued a 30-Day Notice of Intent to Transfer Resident to the hospital effective [REDACTED] 2023 for his own welfare and because his needs cannot be met at the facility and the safety of individuals in the facility is endangered (Testimony and Exhibit 1).
3. The discharge location is [REDACTED] Hospital where the appellant has been since [REDACTED] 2023, following an incident in which he pushed another resident (Testimony and Exhibit 5).
4. The appellant timely appealed the notice on June 21, 2023, after the transfer had already occurred (Exhibit 2).
5. On [REDACTED] 2023 and [REDACTED] 2023, the appellant was observed pushing another resident. Both incidents resulted in injuries to the residents he pushed. (Testimony and Exhibit 5).
6. The appellant has advanced dementia with behavioral disturbances, is non-verbal, and not easily redirected (Testimony and Exhibit 5).
7. After the first incident in April, the appellant was hospitalized, his medications were adjusted, and he returned to the facility (Testimony and Exhibit 5).

decision maker has not received this notice from the facility yet..."

8. On [REDACTED] 2023, the facility issued a Notice of Intent Not to Readmit the Resident for his own welfare and because his needs cannot be met at the facility and the safety of individuals in the facility is endangered (Exhibit 4).
9. The Notice of Intent Not to Readmit addresses the same issues and arises out of the same facts as the Notice of Intent to Transfer (Exhibits 1 and 4).

Analysis and Conclusions of Law

130 CMR 610.029 states the following regarding time frames for notices issued by nursing facilities:

(B) In lieu of the 30-day-notice requirement set forth in 130 CMR 610.029(A), the notice of discharge or transfer required under 130 CMR 610.028 must be made as soon as practicable before the discharge or transfer in any of the following circumstances, which are considered to be emergency discharges or emergency transfers.

(1) The health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician.

(2) The resident's health improves sufficiently to allow a more immediate transfer or discharge and the resident's attending physician documents this in the resident's record.

(3) An immediate transfer or discharge is required by the resident's urgent medical needs and this is documented in the medical record by the resident's attending physician.

(4) The resident has not lived in the nursing facility for 30 days immediately before receipt of the notice.

(C) When the transfer or discharge is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, the notice of transfer or discharge, including that which is required under 130 CMR 456.429: Medical Leave of Absence: Failure to Readmit, must comply with the requirements set forth in 130 CMR 456.701: Notice Requirements for Transfers and Discharges Initiated by a Nursing Facility, and must be provided to the resident and an immediate family member or legal representative, if such person is known to the nursing facility, at the time the nursing facility determines that it will not readmit the resident.

(D) Appeals of discharges and transfers listed in 130 CMR 610.029(B) and (C) are handled under the expedited appeals process described in 130 CMR 610.015(F).

For these reasons, this appeal is handled under the expedited appeal process, despite the 30-day Notice of Intent to Transfer provided by the facility. Furthermore, the Notice of Intent Not

to Readmit, with identical reasoning for not readmitting as in the Notice of Transfer, is essentially a duplicative notice and was not necessary, nor should the appellant have new appeal rights with it. 130 CMR 610.035(A)(6). It addresses the same issue and arises out of the same facts that are the basis of this current appeal and decision.

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. 130 CMR 610.028(A)

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).

A transfer is defined at 130 CMR 610.004 as 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.

Movement of a resident within the same facility from one certified bed to another bed with the same certification does not constitute a transfer.

The stay of a transfer or discharge from a nursing facility pending appeal is addressed in 130 CMR 610.030 which states the following:

- (C) If the request for a hearing, in accordance with 130 CMR 610.015(B)(4), is received within the applicable time frame but after the transfer, the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed in the facility.

(D) In the case of a transfer or discharge that is the result of a nursing facility's failure to readmit a resident following hospitalization or other medical leave of absence, if the request for a hearing is received within the applicable time period, in accordance with 130 CMR 610.015(B)(5), the nursing facility must, upon receipt of the appeal decision favorable to the resident, promptly readmit the resident to the next available bed.

In this case, the nursing facility initiated transfer proceedings for the appellant's welfare and because the facility cannot meet the appellant's needs and the safety of individuals in the nursing facility is endangered by the appellant's behavior. The record supports the facility's position. The appellant has twice been observed pushing other residents. In both incidents, those residents sustained injuries as a result. Due to the appellant's mental condition, it is difficult to redirect him or know when he might snap and push someone again in the future. According to the appellant's wife, the appellant has very good balance and is much more stable than other residents. While this allows the appellant to enjoy his walks and wanderings around the facility, it leaves the other residents of the dementia unit, who are frail and fragile, even more vulnerable to the appellant's behavioral issues. After the first incident and first hospitalization, where his medications were adjusted, the appellant was re-admitted to the facility. Despite the medication adjustment, his behavioral plan, and being under the care of the facility's psychologist and psychiatric nurse practitioner, a second incident still occurred. Additionally, the facility has made clear that due to his advanced dementia and for his own welfare and safety, the appellant requires a higher level of care than the facility can provide.

The facility proposes transfer to the hospital where the appellant has remained since the second incident on [REDACTED] and recommends he enters a geriatric psychiatric facility once he is stabilized. A geriatric psychiatric facility will be better able to adjust his medications and meet his needs. The appellant's wife did not dispute the discharge location; however, she was concerned about how the hospital stay would be paid for and where he would go next.

Based on the record, the facility has adequately documented that the appellant poses a risk to the safety of the other residents and that his needs cannot be met at the facility. Further, the facility has provided sufficient preparation and orientation to the appellant to ensure his safe and orderly transfer to another safe and appropriate place. See G. L. c. 111, § 70E. As such, the facility has complied with the necessary procedures and is permitted to transfer the appellant as planned and, pursuant to 130 CMR 610.030(C) and (D), the facility is not required to readmit the appellant. The appeal is therefore denied.

Order for Nursing Facility

Proceed with the planned transfer, to be implemented no less than five (5) days after the date of this decision. The facility is not required to readmit the appellant.

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: Wakefield Center, Attn: Zachary Wilkins, Administrator, 1 Bathol Street, Wakefield, MA 01880