

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



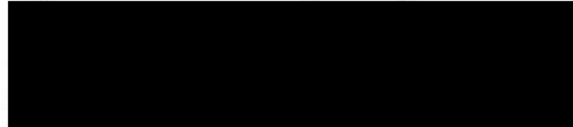
Appeal Decision:	Denied	Appeal Number:	2305376
Decision Date:	09/20/2023	Hearing Date:	09/19/2023
Hearing Officer:	Radha Tilva		

Appearance for Appellant:

Pro se



Appearance for Nursing Facility:



*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 Home Discharge
Decision Date:	09/20/2023	Hearing Date:	09/19/2023
Nursing Facility's Rep.:	[REDACTED]	Appellant's Rep.:	Pro se and [REDACTED]
Hearing Location:	Tewksbury MassHealth Enrollment Center	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 July 5, 2023, [REDACTED] (hereinafter "the nursing facility") issued of a 30-Day Notice of Intent to Discharge the Resident to [REDACTED] a homeless shelter, on August 4, 2023 (Exhibit 1). The appellant filed this appeal in a timely manner on June 30, 2023 (see 130 CMR 610.015(B) and Exhibit 2). It is unclear why the appeal pre-dates the hearing notice, but it does not prejudice the hearing (see Exhibit 4). Challenging a nursing home discharge is valid grounds for appeal (see 130 CMR 610.032).

A hearing was scheduled for August 15, 2023. The appellant was unable to proceed with the hearing on the day of the proceeding as he was unprepared and feeling anxious. The hearing officer issued an Order to Show Cause on August 16, 2023 (Exhibit 6). The appellant timely responded on August 22, 2023 explaining his reasoning behind being unable to proceed (Exhibit 7). The hearing was then rescheduled for September 19, 2023 (Exhibit 8). All parties appeared by telephone.

Action Taken by Nursing Facility

The nursing facility issued a notice of intent to discharge the appellant to a homeless shelter.

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 was represented on the telephone by the Administrator, Director of Social Services, and Business Office Manager. Appellant appeared along with the Assistance Director at the Plymouth Recovery Center where appellant volunteers. The nursing facility and appellant presented the following: appellant was admitted to the nursing facility as a short-term care resident on [REDACTED] 2022 (Exhibit 10, p. 1). The appellant's diagnosis included surgical amputation of right leg, psychotic disorder with delusions, major depressive disorder, nicotine dependence, alcohol abuse, cannabis abuse, and GERD (Exhibit 10, p. 2). The appellant no longer requires assistance with his activities of daily living (ADLs), leaves the facility daily, and does not return until the evening (nursing facility testimony). The appellant spends some of his time volunteering at a recovery center (appellant testimony). A log was submitted by the nursing facility documenting some of appellant's departures from the facility (see Exhibit 10, pp. 42-46). The Medical Director of the nursing facility, [REDACTED], stated in a letter dated August 9, 2023 that appellant is independent with all of his care at the facility and is out of the facility the entire day (Exhibit 10, p. 4). In addition, the letter stated that they do not aid with ADLs and there are no therapy services in place; moreover, he is able to identify and administer his own medications (Exhibit 10, p. 4). [REDACTED] is listed as the physician at the nursing facility in appellant's progress notes (Exhibit 10, p. 47). The nursing facility representatives further testified that the appellant is discharged from physical therapy services. In addition to his health improving sufficiently such that he no longer needs the services provided by the facility, the nursing facility also argues that the appellant also has behaviors which are disruptive to his roommates and staff. On one instance appellant yelled and screamed to the point of where the nursing facility had to call the police department to intervene (see Exhibit 10, p. 52-53).

The nursing facility also seeks discharge because the appellant has failed, after reasonable and appropriate notice, to pay or have Medicaid or Medicare pay for his stay at the nursing facility. The representatives testified that the appellant is currently a member of Commonwealth Care Alliance and that his 6 months of short-term care have expired. While CCA is currently paying for his stay, at some point CCA will cut the facility off from payment as there has been no long-term care conversion completed. The facility has tried to get appellant to cooperate, to complete the long-term care conversion, but he is refusing to do so as he does not want to pay the facility for his stay. The nursing facility testified at hearing that they would reconsider the discharge if appellant would

cooperate with the long-term care conversion paperwork. The appellant ultimately stated at hearing that he would not submit the application as he is unwilling to personally pay the nursing facility as he would have no money leftover to pay his cell phone bill or pay for his food. The appellant stated that he does not like the food or coffee at the facility and thus does not eat there.

With respect to discharge planning the nursing facility testified that that the social worker has made numerous attempts to work with appellant to find an accommodation for him. The facility stated that appellant was previously homeless prior to coming to the nursing facility. The nursing facility has contacted the center where he goes to volunteer to see if they can help find a place for him that he would be amenable to without success. The social worker testified that she has contacted 12 certified “sober” homes and looked at Facebook Marketplace to find a home for appellant. The appellant refused to attend an interview with one of the “sober” homes the nursing facility presented as an option (Exhibit 10, p. 65). In addition, the social worker noted in the record that she contacted another center, the [REDACTED], who stated that the center had previously tried to get appellant housed, but the appellant refused as he did not want to go to a place where he had to follow rules (Exhibit 10, p. 66-67). The appellant does not want to go to Father Bill’s, a homeless shelter, as he believes he is a fall risk (appellant testimony). Similarly, the appellant does not want to go to a “sober” home (appellant testimony). The appellant’s representative testified that the “sober” homes she contacted are not appropriate as the bed would require him to climb up stairs which he cannot do as he feels like he is a fall risk. The appellant further stated that he cannot find an apartment in the area with his \$1,200.00 a month income. The appellant testified that he can do ADL’s on his own, but it is a struggle for him and further stated that he cannot cook for himself because he is not stable. The appellant did not deny being out of the nursing facility daily.

Findings of Fact

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

1. Appellant was admitted to the nursing facility as a short-term care resident on [REDACTED] 2022.
2. The appellant’s diagnosis included surgical amputation of right leg, psychotic disorder with delusions, major depressive disorder, nicotine dependence, alcohol abuse, cannabis abuse, and GERD.
3. The appellant no longer requires assistance with his ADLs and spends the majority of every day outside of the facility.
4. The appellant no longer receives physical therapy service and can identify and take medications independently.

5. The appellant does not want to complete the long-term care conversion as he does not want to give his monthly income to the facility.
 - a. The nursing facility would be willing to reconsider the discharge if appellant participated in the long-term care conversion.
6. The nursing facility has tried to work with appellant for discharge planning, but the appellant has failed to participate in an interview that the nursing facility set up with a “sober” home.
7. The appellant spends the majority of his time at a recovery center volunteering.
8. On July 5, 2023, the nursing facility issued a 30-Day Notice of Intent to Discharge the Resident to a homeless shelter, named Father Bill’s and Mainspring.
 - a. The appellant was previously homeless.
9. The appellant appealed the discharge notice to the Board of Hearings and a hearing was eventually conducted on September 19, 2023.

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.

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).

(Emphasis added).

A discharge is defined at 130 CMR 610.004 as the removal from a nursing facility of an individual who is a resident where the discharging nursing facility ceases to be legally responsible for the care of that individual.

The issue in this case is whether the facility correctly intends to discharge the appellant because his health has improved to the point where he no longer needs the facility's services. The notice requirements set forth at 130 CMR 610.028(C) have been met. Further, the discharge here is supported and documented by the physician's note, dated August 9, 2023, which states that appellant is independent with all of his care throughout the day and is out the nursing facility all day. Through the testimony and documentation provided, the facility has sufficiently proved that appellant no longer needs the services or level of care required in a nursing facility. It is uncontested and well documented that he is independent with his activities of daily living and spends the majority of every day outside of the facility. Though the appellant states that he cannot cook that by itself is not enough to warrant care at this level. The documentation supports that appellant is fully capable of finding food outside of 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 documentation shows that the appellant is stable, alert, and oriented. He has been discharged from physical therapy and is independent with all ADLs. The facility has attempted on numerous occasions to help find the appellant's housing; however, the appellant is unwilling to cooperate as evidenced by his lack of cooperation in doing the interview for housing. There is nothing in the record to suggest that appellant has any skilled needs that could not be met in the community. Moreover, the facility has sufficiently prepared and oriented the resident who can be safely discharged to the community. The appellant was at a homeless shelter prior to this admission and there is nothing in the record demonstrating that appellant cannot go out and live in the community again. Thus, the appellant's health has improved sufficiently such that he no longer needs the services provided by the facility. The facility has provided proper notification of its intent to discharge appellant.

For these reasons, the appellant's appeal is DENIED.

Order for MassHealth

Proceed with the planned discharge and transfer no less than thirty (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.

Radha Tilva
Hearing Officer
Board of Hearings

cc: Attn:

[REDACTED]

Respondent:

[REDACTED]