

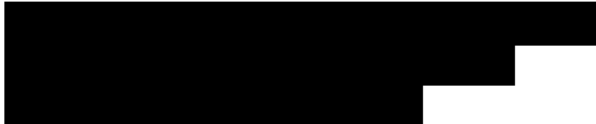
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2305586
Decision Date:	07/27/2023	Hearing Date:	07/24/2023
Hearing Officer:	Patricia Mullen		

Appearances for Appellant:



Appearances for Skilled Nursing Facility:

Judi Wilde, SW consultant; Carolyn Gure, SW consultant; Christine Wilsey, Business Office Manager



*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:	Approved	Issue:	Nursing facility discharge
Decision Date:	07/27/2023	Hearing Date:	07/24/2023
Skilled Nursing Facility Reps.:	Judi Wilde, SW contractor; Carolyn Gure, SW contractor; Christine Wilsey, Business Office Manager	Appellant's Reps.:	
Hearing Location:	Taunton MassHealth Enrollment Center (remote)		

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 10, 2023, the nursing facility informed the appellant of its intent to discharge her on  2023 to a hotel, because she has failed, after reasonable and appropriate notice to pay for (or to have Medicaid or Medicare pay for) a stay in the nursing facility. (130 CMR 610.028 and Exhibit 1). The appellant filed this appeal in a timely manner on July 10, 2023. (see 130 CMR 610.015(B) and Exhibit 2). Notice of discharge from a nursing facility is valid grounds for appeal (see 130 CMR 610.032).

Action Taken by the Nursing Facility

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

Issue

The appeal issue is whether the nursing facility satisfied the statutory and regulatory requirements pursuant to 130 CMR 610.028 when it issued the notice of intent to discharge the appellant.

Summary of Evidence

The appellant appeared telephonically at the hearing, with a volunteer ombudsman and the program director of the ombudsman program at Elder Services. The skilled nursing facility (SNF) was represented telephonically by two Social Worker consultants for the SNF, and the business office manager (BOM) from the SNF. The appellant does not have a Social Security number, but submitted her birth certificate and a photo identification card for identity. (Exhibit 5, pp. 4, 5; exhibit 6, p. 32). The nursing facility submitted no documentation prior to the hearing. One of the Social Workers (hereinafter “the SNF representative”) stated that she attempted to fax the documentation to the Board of Hearing that morning, but the documentation was not going through. The Hearing Officer stated that she would accept any documentation submitted by the end of business that day.

The SNF representative stated that the appellant was admitted to the SNF in [REDACTED], secondary to the physical effects of alcoholism. The SNF representative stated that, since that time, the SNF has been working with the appellant on a plan to discharge her into the community, with services. The SNF representative noted that the appellant is receiving substance abuse counseling in the SNF and such services would need to be continued when the appellant moves into the community. The SNF representative did not know if the appellant privately paid the SNF through a certain date, or if she had a MassHealth application pending.

The second Social Worker from the SNF testified that the appellant twice submitted MassHealth applications, and was denied. The Social Worker stated that she believes there is an immigration issue and the SNF recently had the appellant meet with the Duffy Center to assist with her immigration and MassHealth application. The Social Worker testified that the appellant is receiving no skilled care services at the SNF, is independent with her activities of daily living (ADLs), and can live in a less restrictive environment in the community, with services. The Social Worker stated that the appellant needs community MassHealth so that she can obtain services in the community.

The SNF representative stated that the SNF is paying for 5 nights at the hotel to which the appellant will be discharged, and the SNF will provide visiting nurse (VNA) services for that time. The SNF representative noted that the SNF has contacted sober houses for the appellant, but the sober houses require Medicaid, Medicare, or other insurance, and the appellant has none. The SNF representative stated that the appellant has no income.

The BOM from the nursing facility stated that as of March 21, 2023, the appellant owed over \$200,000.00 in unpaid nursing facility fees. The BOM stated a long term care conversion was sent to MassHealth at the time of the appellant's admission, and a second MassHealth application was filed in early 2022. The BOM stated that in March, 2022, it was determined that the appellant had to spend down her assets, and apply for Social Security benefits, as a condition of eligibility for MassHealth. The BOM stated that the appellant spent down her assets, but the application was held up because she did not have a valid Social Security number and had provided the wrong birth date. The BOM stated that the appellant informed them that her birth certificate was in Florida, but it was later learned that the appellant has a Canadian birth certificate, no legal permanent resident card, and no Social Security number. The BOM stated that she received an email from the MassHealth worker stating that the long term care application for the appellant was not approved. The BOM stated that the appellant had a hearing on an earlier notice of discharge which the SNF issued on the basis of the appellant's improved health, but they were told by that Hearing Officer that they should rescind that notice and issue one for failure to pay.

The appellant stated that prior to the hospitalization that led to her SNF admission, she was working full time and paying rent for an apartment. The appellant stated that she needs a sober environment to live and needs help in the community. The appellant stated that she met with workers at the Duffy Center and gave them her information, but she did not know if they filed a MassHealth application. The appellant stated that she has been filling out housing applications since 2021, but they were denied because she did not have a birth certificate, nor did she have any income. The appellant noted that she now has her birth certificate, but still has no income, and does not have a legal permanent resident card. The appellant added that she is not refusing to pay for her stay at the SNF, she just doesn't have the money to pay. The appellant stated that she believes she was on MassHealth in the community for a short time, but it stopped because she made too much money.

The appellant's ombudsman noted that the appellant was married for a short time and her spouse gave her an invalid Social Security card. The ombudsman noted further that the appellant needs a structured environment to live, and the hotel listed by the SNF will not provide the safe living environment the appellant needs. The ombudsman pointed out that the SNF's discharge plan provides no support for the appellant's alcohol problem. The ombudsman stated that the SNF is required by law to provide a safe discharge for the appellant, and the hotel is not a safe discharge.

The SNF representative stated that SNF documentation to support the notice of discharge would be sent to the Hearing Officer by the end of the day.

The BOM faxed documentation to the Hearing Officer by the end of the day, and such documentation was entered into the record. (Exhibits 5, 6, 7). The BOM submitted the appellant's birth certificate from Canada, Social Insurance card from Canada, and expired Canadian driver's license. (Exhibit 5, pp. 4, 5). An undated note from the SNF's Nurse Practitioner (NP) states that the appellant is medically stable, independent with her ADLs, and does not require SNF care;

multiple people are assisting her to obtain housing; she may need to go to a hotel or shelter from SNF, which would be safe for her to do. (Exhibit 6, p. 4). The BOM submitted a list of the appellant's SNF charges dated July 24, 2023, the date of the hearing, showing a balance of \$112,442.96. (Exhibit 6, p. 5). The BOM also included cash receipt listing reports that appear to show MassHealth payments for the period May, 2021 to September, 2021, and other payments in June, 2022, October, 2022, and December, 2022. (Exhibit 6, pp. 6-9). Included in the packet were Requests for Information from MassHealth dated January 20, 2022, February 1, 2022, and March 29, 2022, and a series of emails between the BOM and a MassHealth worker, with the most recent being in the spring of 2023. (Exhibit 6, pp. 10, 14, 16, 19, 20, 22-28). In an email dated April 13, 2023, the MassHealth worker stated that she forwarded the appellant's information to the central office in Quincy; the MassHealth worker noted that she did not approve the appellant for long term care benefits. (Exhibit 6, p. 19).

In an email to the Hearing Officer, the BOM noted that if MassHealth money is the issue, a bill does not go to the resident and the appellant would have only received a bill if she was private pay or had a patient paid amount. (Exhibit 7, p. 2). The BOM wrote that the appellant has never been provided monthly bills from the SNF. (Exhibit 7, p. 1).

Findings of Fact

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

1. The appellant was admitted to the SNF in [REDACTED], secondary to the physical effects of alcoholism.
2. Since the time of admission, the SNF has been working with the appellant on a plan to discharge her into the community, with services.
3. The appellant is receiving substance abuse counseling in the SNF.
4. The appellant has submitted at least 2 MassHealth applications; no MassHealth denial notices were submitted into the record.
5. The most recent emails between the SNF BOM and the MassHealth worker indicate the appellant had an active MassHealth application in spring 2023.
6. The appellant is medically stable, receives no skilled care services at the SNF, is independent with her ADLs, and per the SNF NP, a hotel or shelter would be a safe discharge for her.
7. The SNF agreed to pay for 5 nights at the hotel to which the appellant will be discharged, and the SNF will provide VNA services for that time.

8. The SNF has contacted sober houses for the appellant, but the sober houses require Medicaid, Medicare, or other insurance, and the appellant has no health insurance.
9. The appellant has no income.
10. The appellant is working with an immigration agency to assist her with her MassHealth application and with her immigration issues.
11. A list of SNF charges dated July 24, 2023, shows the appellant's balance owed to the SNF is \$112,442.96.
12. Cash receipt listing reports from the SNF appear to show MassHealth payments for the period May, 2021 to September, 2021, and other payments in June, 2022, October, 2022, and December, 2022.
13. The SNF has not billed the appellant for her stay at the SNF.

Analysis and Conclusions of Law

Per 130 CMR 456.701(A) and 130 CMR 610.028(A), a nursing facility resident may be transferred or discharged 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;
- (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 MassHealth Agency or Medicare) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

130 CMR 610.028(A); 456.701(A).

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).

130 CMR 610.028(B).

The issue on appeal is whether the appellant has failed, *after reasonable and appropriate notice*, to pay, or failed to have Medicaid or Medicare pay, for her stay at the nursing facility pursuant to 130 CMR 610.028(A)(5) (emphasis added). The SNF has not billed the appellant for her stay at the nursing facility. It is not clear why the SNF has not done so over the 2 ½ year period that the appellant has been a resident. MassHealth coverage can start on the third month prior to the month of application but there is no indication that a MassHealth application is pending that could cover all the days for which the appellant needs coverage. The SNF should have begun billing the appellant when it became clear that MassHealth was not going to cover her entire debt to the SNF. Because the SNF has not billed the appellant, I cannot find that it gave the appellant reasonable and appropriate notice of what she owes.

Because I find that the SNF did not satisfy the requirements of 130 CMR 610.028, I need not reach the second issue of whether the nursing facility has met the requirements of MGL Chapter 111, Section 70E and 42 CFR 483.15(c)(7) in providing sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place.

Because the nursing facility's notice of discharge dated July 10, 2023 does not meet the requirements of 130 CMR 610.028 in that the SNF did not provide reasonable and appropriate notice to the appellant of what she owes to the SNF, the appeal is approved.

Order for the Nursing Facility

Rescind the notice of discharge dated July 10, 2023.

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.

Implementation of this Decision

If you experience problems with the implementation of this decision, you should report this in

writing to the Director of the Board of Hearings at the address on the first page of this decision.

Patricia Mullen
Hearing Officer
Board of Hearings

cc: Administrator, Windsor Skilled Nursing & Rehab Center, 265 North Main Street South
Yarmouth, MA 02664