

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2306702
Decision Date:	9/19/2023	Hearing Date:	08/28/2023
Hearing Officer:	Patricia Mullen	Record Open to:	09/11/2023 (for nursing facility)

Appearance for Appellant:

Pro se

Appearances for Nursing Facility:

Peter Murfitt, Administrator; Lakiya Jackson,
Director of Social Services



*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:	9/19/2023	Hearing Date:	08/28/2023
Nursing Facility's Reps.:	Peter Murfitt, Administrator; Lakiya Jackson, Dir. Of Social Services	Appellant's Rep.:	Pro se
Hearing Location:	Charlestown 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 of intent to discharge dated July 10, 2023, the nursing facility informed the appellant that he would be discharged to a shelter on August 10, 2023 because his health has improved sufficiently so that he no longer requires the services provided by the nursing facility. (130 CMR 610.028(A)(2) and Exhibit 1). The appellant filed this appeal in a timely manner on August 8, 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.

Issue

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

Summary of Evidence

The appellant appeared telephonically at the hearing and verified his identity. The skilled nursing facility (SNF) was represented telephonically by its administrator and its Director of Social Services. The SNF administrator testified that the appellant was admitted to the SNF from the hospital on [REDACTED] 2022, for rehabilitation after an infection resulting from surgery. The SNF Administrator stated that the appellant was treated in the SNF with antibiotics and the most recent physician progress note states that the appellant has no acute medical issues and is medically cleared for discharge. (Exhibit 4, p. 4). The SNF Administrator testified that the appellant is independent with his activities of daily living (ADLs), comes and goes from the nursing facility independently, and is not receiving any skilled services at the nursing facility. The SNF Administrator stated that the appellant has been clinically screened for short term care.

The SNF Director of Social Services stated that the SNF has been engaged in discharge planning with the appellant and is working with Old Colony Elder Services on a CHANCE application. The SNF Director of Social Services stated that the facility has filled out several housing applications for the appellant and looked at two rest homes. The Director of Social Services stated that she sent an evaluation packet to one rest home and is awaiting a response.

According to medical notes in the record, the appellant had a left carotid endarterectomy with bovine patch on [REDACTED] (Exhibit 4, p. 4). The surgery was complicated by a left neck hematoma that became infected. (Exhibit 4, p. 4). The appellant had an incision and drainage of the infection and evacuation of the hematoma on [REDACTED] and re-exploration of the left neck, removal of the infected carotid patch, and carotid endarterectomy and saphenous patch angioplasty on [REDACTED]. (Exhibit 4, p. 4). The appellant was admitted to the nursing facility on [REDACTED] 2022 for management of the infection and was treated with intravenous antibiotics (Ceftriaxone) through [REDACTED]. (Exhibit 4, p. 4). The appellant is on the oral antibiotic Cefpodoxime indefinitely. (Exhibit 4, p. 4). The appellant's medical history includes coronary artery disease, high blood pressure, diabetes, depression and anxiety. (Exhibit 4, p. 4). The physician's progress note dated [REDACTED] 2023 noted that Review of Systems was negative, but for generalized weakness, vital signs were stable, the surgical incision site was healing well, and physical exam was within normal limits. (Exhibit 4, p. 3).

The appellant stated that he lived with his sister for 6 months, prior to his hospitalization and nursing facility admission, and prior to that, he lived with a friend for a year. The appellant stated that there is no room at his sister's house now and the friend with whom he shared a home, passed

away. The appellant stated that he put his name in for housing but doesn't have an updated license or identification card. The appellant stated that he needs an identification card to get housing but can't get out to get one. The Director of Social Services noted that the appellant leaves the facility at least every other day with friends or family, and suggested that the appellant have them drive him to the Registry of Motor Vehicles to get a replacement license/ID.

The appellant stated that he receives SNAP benefits through the Department of Transitional Assistance, but no longer receives Social Security income because he inherited land from his mother and now owes money to Social Security for overpayments. The appellant stated that he worked landscaping and construction jobs prior to his hospital admission. When asked why he feels he needs to stay at the nursing facility, the appellant responded that he needs help with his medications. The appellant stated that he would have to leave the shelter every morning and questioned what he was supposed to do during the day after leaving.

The record was left open for two weeks to give the nursing facility the opportunity to get documentation from the physician addressing the shelter as an appropriate discharge. (Exhibit 7). During the record open, the SNF Director of Social Services submitted an updated physician progress report from the SNF physician. (Exhibit 7). The SNF physician wrote that the appellant has no acute medical issues, and is medically cleared for discharge. (Exhibit 7, p. 5). The SNF physician wrote further that shelters such as Father Bills, and/or rest homes, are appropriate for discharge destination. (Exhibit 7, p. 5).

Findings of Fact

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

1. The appellant was admitted to the SNF from the hospital on [REDACTED] 2022, for rehabilitation after an infection resulting from surgery; the appellant is clinically screened for short term care.
2. The appellant was treated in the SNF with antibiotics and currently has no acute medical issues and is medically cleared for discharge.
3. The appellant is independent with his ADLs, comes and goes from the nursing facility independently a few times a week, and is not receiving any skilled services at the nursing facility.
4. The SNF has been engaged in discharge planning with the appellant and is working with Old Colony Elder Services on a CHANCE application; the SNF has filled out several housing applications for the appellant and looked at two rest homes; the SNF sent an evaluation packet to one rest home and is awaiting a response.

5. The appellant had a left carotid endarterectomy with bovine patch on [REDACTED]; the surgery was complicated by a left neck hematoma that became infected.
6. The appellant had an incision and drainage of the infection and evacuation of the hematoma on [REDACTED] and re-exploration of the left neck, removal of the infected carotid patch, and carotid endarterectomy and saphenous patch angioplasty on [REDACTED].
7. The appellant was admitted to the nursing facility for management of the infection and was treated with the intravenous antibiotics Ceftriaxone through [REDACTED].
8. The appellant is on the oral antibiotic Cefpodoxime indefinitely.
9. The appellant's medical history includes coronary artery disease, high blood pressure, diabetes, depression and anxiety.
10. The physician's progress notes for the period [REDACTED] 2023 to [REDACTED] 2023, and for the period [REDACTED] 2023 through [REDACTED] 2023, note that Review of Systems is negative, but for generalized weakness, vital signs are stable, the surgical incision site is healing well, and physical exam is within normal limits. (Exhibits 4, 7).
11. The appellant lived with his sister for 6 months, prior to his hospitalization and nursing facility admission, and prior to that, he lived with a friend for a year.
12. The appellant does not have an updated license or ID card.
13. The appellant receives SNAP benefits through the Department of Transitional Assistance, but no longer receives Social Security income because he inherited land from his mother and now owes money to Social Security for overpayments.
14. The appellant worked landscaping and construction jobs prior to his hospital admission.
15. The SNF physician reported that shelters such as Father Bills, and/or rest homes, are appropriate for discharge destinations for the appellant.

Analysis and Conclusions of Law

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;

(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 pay for) a stay at the nursing facility; or

(6) the nursing facility ceases to operate.

130 CMR 610.028(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)(3) or (4).

130 CMR 610.028(B).

The issue on appeal is whether the appellant's health has improved sufficiently so that he no longer requires the services provided by the nursing facility, pursuant to 130 CMR 610.028(A)(2).

The appellant was admitted to the SNF from the hospital on [REDACTED] 2022, for short term care rehabilitation after an infection resulting from surgery. The appellant finished a course of IV antibiotics in November, 2022, has no acute medical issues, is independent with ADLs, comes and goes from the nursing facility independently a few days a week, and is not receiving any skilled services at the nursing facility. Physician's progress notes for the period [REDACTED] 2023 to [REDACTED] 2023, and for the period [REDACTED] 2023 through [REDACTED] 2023, note that Review of Systems is negative, but for generalized weakness, vital signs are stable, the surgical incision site is healing well, and physical exam is within normal limits. The SNF physician who examined the appellant, reported that shelters such as Father Bills, and/or rest homes, are appropriate for discharge destinations for the appellant.

The nursing facility has provided support for its claim that the appellant's health has improved sufficiently so that he no longer needs nursing facility services.

The second issue is 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. The Federal Centers for Medicare and Medicaid defines "sufficient preparation" within the

meaning of 42 CFR 483.15(c)(7) to mean that the facility informs the resident where he or she is going and takes steps under its control to assure safe transportation; the facility should actively involve, to the extent possible, the resident and the resident's family in selecting the new residence. (see *Centennial Healthcare Investment Corp. v. Commissioner of the Division of Medical Assistance*, Appeals Court No. 03-P-879, 2004)

The nursing facility has met its burden of providing sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place. The nursing facility intends to discharge the appellant to a shelter. Based on the appellant's nursing facility record and the physician's report, the place to which the nursing facility intends to discharge the appellant is safe and appropriate. The appellant is receiving no skilled services at this time and is at his baseline.

The nursing facility involved the appellant in discharge planning. The appellant argues he cannot get housing because he does not have an updated license or ID. The appellant leaves the nursing facility with family and friends multiple times a week and thus has had opportunities to get an updated license or ID. The fact that the appellant, understandably, does not want to go to a shelter and has not found an alternative place to live, is out of the control of the nursing facility. The nursing facility's notice of discharge dated July 10, 2023 meets the requirements of 130 CMR 610.028 and MGL Chapter 111, section 70E. The appeal is denied.

Order for the Nursing Facility

Proceed with the discharge as set forth in the notice dated July 10, 2023 after the 30 day stay (from 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.

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:

[REDACTED]