

# Office of Medicaid BOARD OF HEARINGS

**Appellant Name and Address:**



**Appeal Decision:** Approved

**Appeal Number:** 2306917

**Decision Date:** 10/19/23

**Hearing Date:** September 28, 2023

**Hearing Officer:** Stanley M. Kallianidis

**Appellant Representative:**



**Facility Representative:**

Darlene Toolin, Esq.



***Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Office of Medicaid  
Board of Hearings  
100 Hancock Street, 6<sup>th</sup> Floor  
Quincy, MA 02171***

## APPEAL DECISION

|                         |            |                        |                                 |
|-------------------------|------------|------------------------|---------------------------------|
| <b>Appeal Decision:</b> | Approved   | <b>Issue:</b>          | Adequacy of Notice of Discharge |
| <b>Decision Date:</b>   | 10/19/23   | <b>Hearing Date:</b>   | September 28, 2023              |
| <b>Facility Rep.:</b>   | [REDACTED] | <b>Appellant Rep.:</b> | [REDACTED]                      |

### Authority

This hearing was conducted pursuant to Massachusetts General Laws Chapter 118E, Chapter 30A, and the rules and regulations promulgated thereunder.

### Jurisdiction

In notices dated July 14, 2023, and August 8, 2023, the respondent nursing home planned on discharging the appellant because of a failure, after reasonable and appropriate notice, to pay for (or failed to have the MassHealth agency or Medicare pay for) a stay in the facility (Exhibit 1). The appellant filed this appeal in a timely manner on August 14, 2023 (see 130 CMR 610.015 and Exhibit 2). A nursing facility initiated discharge is grounds for appeal (see 130 CMR 610.032).

### Action Taken by the Facility

The facility planned on discharging the appellant because of a failure, after reasonable and appropriate notice, to pay for a stay in the facility.

### Issue

Pursuant to 130 CMR 610.028, does the facility's discharge notice comply with the requirement to list the location of discharge?

## Summary of Evidence

In notices dated July 14, 2023, and August 8, 2023, the respondent nursing home planned on discharging the appellant because of a failure, after reasonable and appropriate notice, to pay for (or failed to have the MassHealth agency or Medicare pay for) a stay in the facility. The location of discharge in the July 14, 2023 notice was to the appellant's home or "another skilled nursing facility." The August 8, 2023 notice superseded the July 14, 2023 notice. The August 8, 2023 notice's discharge location was indicated only as "another skilled nursing facility" (Exhibit 1).

Legal counsel for [REDACTED] (the facility) submitted a memo with attachments into evidence (Exhibit 3). She explained the facility's basis for the appellant's discharge, stating that the appellant has failed to pay anything towards her patient paid amount since being approved for MassHealth long-term care benefits in August 2022. To date she owes \$23,893.23. The appellant was admitted to the facility in early 2022 and approved for MassHealth in August 2022. MassHealth has recently issued a notice of termination of benefits to the appellant, but this is currently under appeal and not an issue in her current planned discharge (Exhibit 3).

Legal counsel continued that the facility had located a nursing home that was willing to accept the appellant, but the appellant refused this location. That location is no longer open to the appellant. Currently, there is no specific facility that has agreed to accept the appellant, and the appellant refuses to participate in placement discussions (Exhibit 3).

It was revealed that a prior Board of Hearings decision on the appellant's discharge from the same facility was approved in favor of the appellant. On June 27, 2023, the hearing officer in that appeal determined that even though the appellant had not paid her patient paid amount as required, the indicated location of discharge, the appellant's home, was not safe or appropriate (Exhibit 3).

Legal counsel for the facility concluded that the facility's plan to discharge the appellant to another skilled nursing home fits the legislature's intent for a safe discharge. Therefore, discharging the appellant to an unspecified nursing home is authorized under the regulations (Exhibit 3).

The appellant testified first of all, that she never agreed to the patient paid amount that MassHealth had determined. She stated that she would have appealed the notice, but that she never received it. She also pointed out that the Board of Hearings has already approved her appeal of a nursing home discharge in a similar if not identical notice. She testified that she felt that the nursing facility was now retaliating against her.

The appellant's attorney did not dispute that the appellant owes \$23,893.23 due to her unpaid patient paid amount spanning the last 13 months. He contended, however, that the appellant's appeal must nonetheless be approved because the August 8, 2023 notice of discharge does not

specify a location of discharge. He stated that merely indicating “another skilled nursing facility” as a location of discharge does not satisfy the notice requirements of 130 CMR 610.028.

## Findings of Fact

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

1. The appellant was admitted to her facility in early 2022 (Exhibit 3).
2. The appellant was subsequently approved for MassHealth in August 2022 owing a monthly patient paid amount (Exhibit 3).
3. The patient paid amount has not been paid for any of the last 13 months. To date, the appellant owes \$23,893.23 to the facility towards this unpaid monthly obligation (Exhibit 3).
4. In notices dated July 14, 2023, and August 8, 2023, the facility planned on discharging the appellant because of a failure, after reasonable and appropriate notice, to pay for (or failed to have the MassHealth agency or Medicare pay for) a stay in the facility (Exhibit 1).
5. The location of discharge in the July 14, 2023 notice was to the appellant’s home or “another skilled nursing facility” (Exhibit 1).
6. The August 8, 2023 notice superseded the July 14, 2023 notice. The August 8, 2023 notice’s discharge location was indicated only as “another skilled nursing facility” (Exhibit 1).
7. A prior Board of Hearings decision on the appellant’s discharge from the same facility was approved in favor of the appellant even though she had not paid her patient paid amount as required, because the indicated location of discharge, the appellant’s home, was deemed not safe or appropriate (Exhibit 3).

## Analysis and Conclusions of Law

With regard to discharges initiated by a nursing facility, a resident may be discharged because of a failure, after reasonable and appropriate notice, to pay for (or failed to have the MassHealth agency or Medicare pay for) a stay in the facility (130 CMR 610.028(A)(5)).

Before a nursing facility discharges or transfers any resident, the nursing facility must hand deliver to the resident and mail to a designated family member or legal representative a notice written in 12-point or larger type that contains, in a language the member understands, the following:

- (1) the action to be taken by the nursing facility;
- (2) the specific reason or reasons for the discharge or transfer;
- (3) the effective date of the discharge or transfer;
- (4) the location to which the resident is to be discharged or transferred;

The nursing facility must meet the requirements of all other applicable federal and state regulatory requirements in addition to the MassHealth-related regulations discussed above, including MGL c.111, §70E, which states in pertinent part that

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.

In the instant case, I have found that the appellant was admitted to her facility in early 2022 and was subsequently approved for MassHealth in August 2022 owing a monthly patient paid amount. The patient paid amount has not been paid for any of the last 13 months. To date, the appellant owes the facility a total of \$23,893.23 in accrued monthly patient paid amount bills.

In notices dated July 14, 2023, and August 8, 2023, the facility planned on discharging the appellant because of a failure, after reasonable and appropriate notice, to pay for (or failed to have the MassHealth agency or Medicare pay for) a stay in the facility. The location of discharge in the July 14, 2023 notice was to the appellant's home or "another skilled nursing facility." The August 8, 2023 notice superseded the July 14, 2023 notice. The August 8, 2023 notice's discharge location was indicated only as "another skilled nursing facility."

The August 8, 2023 superseding notice was owing to a prior Board of Hearings decision on the appellant's discharge from the same facility which was approved in favor of the appellant even though she appellant had not paid her patient paid amount as required. The indicated location of discharge, the appellant's home, was deemed not safe or appropriate by the hearing officer in that case.

Notwithstanding that the appellant owes her facility a relatively large patient paid amount bill, I conclude that the appeal must once again be approved, this time due to an insufficient discharge notice with a specified place of discharge lacking.

The August 8, 2023 notice's discharge location of "Another skilled nursing facility" suggests a level of care that the appellant would remain to be entitled to, but not a place. There is no contemplation of exactly where this new facility might be located.

I thus conclude that knowing where one is to be discharged is a requisite under the above cited statute and regulations. I rule that the appeal is approved without prejudice- i.e., the facility may issue a new discharge notice provided that the facility bills remains unpaid, and a specified location of discharge is clearly indicated in the new notice. In such a case, the appellant would be entitled to another right of appeal.

The appeal is therefore approved due to insufficient notice of discharges.

## **Order for the Facility**

Discharging the appellant is not authorized based upon the July 14, 2023 and August 8, 2023 Notices of Discharge.

## 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.

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Stanley M. Kallianidis  
Hearing Officer  
Board of Hearings

cc:

