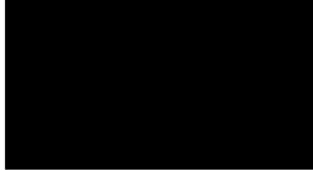


**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Dismissed	Appeal Number:	2307265
Decision Date:	09/08/2023	Hearing Date:	09/07/2023
Hearing Officer:	Paul C. Moore		

Appellant's Representative:
None

Respondent's Representative:



*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:	Dismissed	Issue:	Discharge, Adult Day Health Program
Decision Date:	09/08/2023	Hearing Date:	09/07/2023
Respondent's Rep.:	Director, ADH Program	Appellant's Rep.:	None
Hearing Location:	Board of Hearings (remote)		

Authority

This proceeding is governed pursuant to Massachusetts General Laws Chapters 118E and 30A, and the rules and regulations promulgated thereunder.

Jurisdiction/Procedural Background

On August 21, 2023, [REDACTED] ("respondent"), [REDACTED] issued a 30-Day Notice of Discharge ("discharge notice") to the appellant seeking to discharge her to [REDACTED] on [REDACTED], 2023 (Exh. 1). The stated grounds for the planned discharge are "the safety of the individuals in the facility (*sic*) is endangered due to the clinical or behavioral status of the [appellant]" and "transfer (*sic*) is necessary for the [appellant's] welfare and the [appellant's] needs cannot be met by the facility (*sic*)" (*Id.*).

The discharge notice reflects that the appellant has appeal rights to the Board of Hearings (BOH) (*Id.*).

A request for a fair hearing was received by the BOH on August 21, 2023 (Exh. 2).

The BOH notified the appellant's representative and the respondent of a hearing to be held telephonically on September 7, 2023 at 10 am (Exh. 3).

At the designated time, the hearing officer initiated a phone call to the appellant's representative and to the respondent. The appellant's representative did not answer the call. The hearing officer

attempted to reach her two times. The respondent, through its director, appeared via telephone. The respondent indicated that an agreement had been reached with the appellant and her representative to arrange community-based services for the appellant during the day, and further noted that if such services were not in place by September 19, 2023 (the planned discharge date), the appellant could remain a participant in the respondent's adult day health program through September 30, 2023. The respondent indicated that she was under the impression that the appellant's representative had intended to withdraw the instant appeal (Testimony).

Analysis and Conclusions of Law

The Fair Hearing Rules at 130 CMR 610.032, "Grounds for Appeal," enumerate the types of actions that may be appealed to the BOH.

130 CMR 610.032(C) reflects the following:

Nursing facility residents have the right to request an appeal of any nursing facility-initiated transfer or discharge.

"Nursing facility" is defined at 130 CMR 610.004 as "a Medicare- or Medicaid-certified nursing facility or certified unit within a nursing facility that is licensed by the Department of Public Health to operate in Massachusetts."

I conclude that an Adult Day Health program is not a nursing facility as defined in the Fair Hearing Rules. An Adult Day Health program is not a Medicare- or Medicaid-certified facility licensed by the Department of Public Health. There is no evidence that the appellant is a nursing facility resident. Therefore, the BOH has no jurisdiction to adjudicate this planned discharge.

Even if the BOH had jurisdiction to hear this appeal, it appears that the parties have reached an agreement on how to proceed with the appellant's care. Additionally, the appellant's representative did not appear at the fair hearing, of which she was duly notified.

Pursuant to the Fair Hearing Rules at 130 CMR 610.035(A)(8) (effective 1/20/23), "Dismissal of a Request for a Fair Hearing:"

BOH will dismiss a request for a hearing when. . . BOH learns of an adjustment or action that resolves all of the issues in dispute between the parties.

For all of these reasons, this appeal is DISMISSED.

Order for Adult Day Health Program

None.

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.

Paul C. Moore
Hearing Officer
Board of Hearings

CC: