

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2308107
Decision Date:	10/04/2023	Hearing Date:	09/25/2023
Hearing Officer:	Sara E. McGrath		

Appearances for Appellant:



Appearances for Nursing Facility:

Steve Williams, Director of Social Services
Amber DuBois, Director of Finance
Sarah Ham, Social Worker



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
Board of Hearings
100 Hancock Street
Quincy, MA 02171

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Nursing Facility Discharge/Transfer
Decision Date:	10/04/2023	Hearing Date:	09/25/2023
Nursing Facility Reps.:	Steve Williams Amber Dubois Sarah Ham	Appellant Rep.:	Pro se
Hearing Location:	Board of Hearings, Quincy		

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 [REDACTED] 2023, [REDACTED] a skilled nursing facility, notified the appellant of its plan to discharge her to her home on [REDACTED] because it determined that she had failed to pay for her stay at the facility (Exhibit 1). The appellant filed this appeal in a timely manner on September 11, 2023 (130 CMR 610.015 and Exhibit 1). The discharge of a nursing home resident is valid grounds for appeal (130 CMR 610.028(A)).

Action Taken by the Nursing Home

The skilled nursing facility notified the appellant of its intent to discharge her because it determined that she had failed to pay for her stay at the facility.

Issue

The issue is whether the skilled nursing facility is justified in seeking to discharge appellant, and whether it followed proper procedures in doing so.

Summary of Evidence

The skilled nursing facility (the facility) was represented by its Director of Social Services and Director of Finance, both of whom appeared at the hearing by phone.¹ They presented the following factual background: The appellant, a female in her early 80s, was admitted to the facility on [REDACTED] 2023 for short-term rehabilitation to treat a right leg fracture after a fall at home. The appellant's "Medicare skilled days" ended on August 21, 2023, but the appellant did not feel that she was ready to return home at that time.² On August 22, 2023, the Director of Finance met with the appellant to discuss payment options, including private payment or submitting a MassHealth application. The appellant stated that she did not want to apply for MassHealth benefits, and indicated that she could not pay the facility's private rate (\$465 per day). The appellant initially stated that she would leave the facility on August 25th, but changed her mind. Facility staff met with the appellant two more times over the following week to discuss payment options, without success.

The appellant is currently receiving both physical and occupational therapy at the facility, and receives daily dressing changes for a recent heel wound. Prior to her admission, the appellant lived alone in her home. Before the appellant is discharged, the facility plans to set up home services, including visiting nursing services, physical and occupational therapy, and home health aide services. Further, the facility plans to make a referral to the local elder service agency to set up cleaning and shopping services, as well as meal delivery. The appellant indicated that she has a laundry service already in place.

The facility representatives stated that as of September 30, 2023, the appellant has a balance due to the facility of \$18,939,46. Invoices were hand delivered to the appellant on August 22, August 28, and September 25, 2023 (Exhibit 4).

The appellant appeared at the hearing by phone and explained that she does not feel ready to go home yet. The new problem with her heel makes it difficult for her to walk. She does not feel that she has received much physical therapy. She stated that she does not have the funds to pay the facility's private rate, and she has no plans to apply for MassHealth benefits. She stated that she does not specifically remember being handed the invoices, but she knows that she owes money to the facility.

¹ Another facility social worker appeared by phone as well, but did not offer any testimony at hearing.

² The appellant disputed this determination via a Medicare appeal, but was ultimately unsuccessful.

Findings of Fact

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

1. The appellant is a female in her early ■■■s; she was admitted to the facility on ■■■■ 2023.
2. The appellant's admission was prompted by a fall at home that resulted in a right leg fracture.
3. Medicare paid for the appellant's facility stay through August 21, 2023.
4. Since that date, the appellant has not had a payor source and her debt at the facility exceeds \$18,000.
5. The facility has hand-delivered invoices to the appellant.
6. The appellant is currently receiving both physical and occupational therapy at the facility, and receives daily dressing changes for a heel wound.
7. Prior to her admission, the appellant lived alone in her home.
8. Before discharge, the facility plans to set up home services, including visiting nursing services, physical and occupational therapy, and home health aide services. Further, the facility plans to make a referral to the local elder service agency to set up cleaning and shopping services, as well as meal delivery.

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. When the facility seeks to discharge a resident because of nonpayment, the clinical record must be documented (130 CMR 610.028(B)).

In this case, the facility initiated discharge proceedings because it determined that the

appellant 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. The record adequately supports the facility's position. The facility has notified the appellant of the debt owed, both verbally and in writing, and these efforts constitute reasonable and appropriate notice of the debt owed to the facility (Exhibit 4). The appellant does not dispute that the facility has not been paid after August 21st, and she argues that she simply does not have sufficient funds to pay for her stay. This argument is not persuasive. Further, as of the date of hearing, the appellant had made no effort to apply for MassHealth benefits. On this record, the appellant has not demonstrated that these discharge proceedings were improperly initiated.

Additionally, the facility has demonstrated that it has met the requirements of M.G.L. c. 111, §70E. Per this statutory provision, before a nursing facility may discharge a resident, it must ensure safe and orderly transfer or discharge from the facility to another safe and appropriate place. The discharge location is the appellant's residence – the home in which she successfully lived prior to her facility admission. Further, the facility has indicated that prior to discharge, it will put into place comprehensive supportive services to ensure the appellant's medical well-being and safety. These services include nursing, physical and occupational therapy, home health, and additional services to assist with the appellant's instrumental activities of daily living. With these measures, the facility has ensured that the appellant's home will be a safe and appropriate place.

On this record, the appeal is denied.

Order for the Nursing Facility

Proceed with planned transfer, to be implemented 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.

Implementation

If this nursing facility fails to comply with the above order, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Sara E. McGrath
Hearing Officer
Board of Hearings

cc:

