

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2308283
Decision Date:	10/19/2023	Hearing Date:	09/28/2023
Hearing Officer:	Mariah Burns		

Appearance for Appellant:
Pro se

Appearance for the Skilled Nursing Facility:
Lynn Wilson, Director of Social Services;
Jennifer Young, Social Worker; Monica
Kosmider, Assistant Director of Nursing,
Ernestina Nkrumah, After Care



*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 Home Discharge; Skilled Nursing Needs
Decision Date:	10/19/2023	Hearing Date:	09/28/2023
Nursing Facility's Rep.:	Lynn Wilson, et. al.	Appellant's Rep.:	Pro se
Hearing Location:	Remote	Aid Pending:	No

Authority

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

Jurisdiction

On August 15, 2023, the nursing facility issued a 30-day notice that the appellant would be discharged to a homeless shelter because the appellant's health sufficiently improved so that she no longer needs the services provided by the facility. *See* 130 CMR 610.028 and Exhibit 1. The appellant filed this appeal in a timely manner on September 13, 2023. *See* 130 CMR 610.015(B) and Exhibit 1. Notice of transfer or discharge from a nursing facility is valid grounds for appeal. *See* 130 CMR 610.032.

Action Taken by MassHealth

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

Issue

The appeal issue is whether the nursing facility proved that the appellant's health sufficiently improved so that she no longer requires skilled nursing services and that they abided by the requirements of M.G.L. c. 111, §70E when crafting a discharge plan.

Summary of Evidence

The appellant is an adult and represented herself by telephone at hearing.¹ The skilled nursing facility was represented telephonically at hearing by their Director of Social Services, a Social Worker, the Assistant Director of Nursing, and a member of the After Care team. The following is a summary of the testimony and evidence provided at hearing:

The appellant was admitted to the nursing facility on [REDACTED] 2023, having been discharged from the hospital with diagnoses of COPD and substance use disorder and for issues with breathing. This specific nursing facility frequently admits patients who have a history of mental health issues and/or substance use disorder and who have experience with being unhoused. The nursing facility reported that they are often referred patients whom the hospital does not wish to discharge to a shelter, but who do not necessarily have many, if any, skilled nursing needs.

In the case of the appellant, she received physical therapy and occupational therapy for chronic leg pain and met with a substance use disorder counselor. The appellant denies suffering from substance use disorder. She did not receive any skilled nursing care for her COPD. After several physical and occupational therapy appointments, the appellant completed her treatments and was found to not require any additional skilled nursing care. The nursing facility provided a letter from a facility physician, as well as her clinical record which supports this assertion.

When organizing the appellant's discharge plan, the nursing facility notified the appellant of their intention to discharge her to a local homeless shelter. They reported that they would prefer to refer her to a sober home, but the appellant's denial of substance use disorder makes that impossible. Further, they indicated that they ordinarily would try to connect her with a rest home, but such homes do not allow residents to be on [REDACTED] which the appellant is and has been for over 20 years.² The appellant does not have any family who would be willing to house her, and thus, the nursing facility reported that the homeless shelter was the only possible location to which the appellant could be discharged. The nursing facility reported that any remaining care that the appellant requires can be treated on an outpatient basis and that she does not have any

¹ There were some questions about a previous hearing that was rescheduled because the appellant wanted her son present to represent her. Today, she was specifically asked if she wanted her son present, and she said no. She did intimate that she did not know that she could have someone present with her, but for reasons stated herein, I do not credit that statement. I find that she was adequately informed of her right to have a family member or personal representative present and declined such assistance.

² The appellant reported that she is on [REDACTED] not for substance use disorder, but to treat her fibromyalgia. The Assistant Nursing Director indicated that she has never heard of someone using [REDACTED] as a treatment for fibromyalgia. The only relevant circumstance she could see such a treatment would be to treat spinal pain as a patient is being weaned off of narcotics.

medical needs that cannot be treated safely at the shelter. The facility also reported assisting the appellant with setting up appointments for her when she returns to the community.

The appellant reported that she feels as though she should not be discharged because she still needs help. She claims that the nursing facility has done nothing to assist her beyond a few physical therapy appointments. She has, in the past, resided at the shelter in question and expressed concerns for her mental health if she is forced to return. She wishes to remain at the facility temporarily, as she reported having just received a Section 8 housing voucher for which she has been waiting for years. The nursing facility stated that although the appellant claims to have this voucher, she has yet to receive it in hand, they have no indication that she has received it. They further reported that even if she has received a voucher, it could still take three to six months for her to be placed in such housing.

Findings of Fact

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

1. The appellant has been a resident of the nursing facility since [REDACTED] 2023, having been discharged from the hospital with primary diagnoses of COPD and Substance Use Disorder. Testimony, Exhibit 4 at 3.
2. During her stay at the facility, the appellant received physical and occupational therapy and has since completed all of the necessary inpatient treatment. Testimony, Exhibit 4 at 3-8.
3. On August 15, 2023, the facility issued a 30 day notice of discharge to the appellant, reporting that her health had sufficiently improved such that she no longer requires skilled nursing care. The discharge location was listed as a local shelter. Exhibit 1.
4. On September 13, 2023, the appellant filed a timely notice of appeal. Exhibit 2.
5. The appellant does not have any health needs that cannot be safely met at the shelter, and any follow-up care she may require can be treated on an outpatient basis. Testimony.
6. The appellant previously resided at the shelter in question. Testimony.
7. The nursing facility would prefer to discharge the appellant to a sober house or a rest home, but her denial of substance use disorder and prescription for [REDACTED] make such a placement impossible. Testimony.

Analysis and Conclusions of Law

The federal Nursing Home Reform Act (NHRA) of 1987 guarantees all residents the right to advance notice of, and the right to appeal, any transfer or discharge initiated by a nursing facility. MassHealth has enacted regulations that mirror the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant MassHealth regulations may be found in the Nursing Facility Manual regulations at 130 CMR 456.000 *et seq.* and in the Fair Hearing Rules at 130 CMR 610.000 *et seq.* Thus, when issuing a notice of discharge for a resident, the nursing facility must comply with the requirements set forth within those regulations regardless of whether the resident is a MassHealth member.

Under 130 CMR 610.028, a resident may only be discharged from a nursing facility under the following circumstances:

- (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 Medicaid or Medicare pay for) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

When, as it is here, the transfer or discharge is sought due to the circumstances specified in (2) above, the resident's clinical record must contain documentation by the resident's physician to explain the transfer or discharge. See 130 CMR 610.028(B); 130 CMR 456.701(B). The facility must also typically provide 30-days' notice, but it may give less than 30-days' notice where the "health or safety of individuals in the nursing facility would be endangered and this is documented in the resident's record by a physician." 130 CMR 610.029(B)(1).

Furthermore, the nursing facility must demonstrate that it has complied with the requirements under M.G.L. c. 111, §70E, which states the following:

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.

Thus, to determine whether the nursing facility has met its burden of proof in properly discharging a resident, a two-pronged analysis must be considered. First, the nursing facility must show that it complied with the requirements of 130 CMR 610.028 in issuing the notice, and second that c. 111, §70E has been followed as part of the resident's discharge plan. After hearing, and for the following reasons, I find that the nursing facility has met its burden of proof and is permitted to discharge the appellant accordingly.

Here, the nursing facility issued the discharge notice at hand because they assert that the appellant's health has improved and that she does not require skilled nursing services. See Exhibit 1. The facility sufficiently demonstrated that the appellant's needs do not require skilled nursing care and can be met on an outpatient basis. The appellant had been receiving both physical and occupational therapy treatment during her time in the facility, and documentation was provided indicating that the appellant no longer requires any skilled therapy. See Exhibit 4 at 3-7. The reporting physician stated that the appellant "completed her treatments and no longer requires the skilled services at the nursing facility, and so she can safely discharge back to the community." *Id.* at 3. The representatives from the nursing facility credibly testified that the appellant is not currently receiving any skilled nursing care for her COPD or any of her other diagnoses.

The appellant maintains that she has not gotten the help that she needs, and that staff at the nursing facility have done nothing to help her. She claims she has received no medical care during her time at the facility. She denies suffering from substance use disorder, despite having been on [REDACTED] for over 20 years, and claims she takes it for her fibromyalgia. I do not credit the appellant's testimony, but even if I did, she did not provide any testimony to counter the evidence provided by the facility that she no longer requires skilled care. It appears that her desire to remain at the facility is due to her not wishing to be housed at a shelter while she awaits Section 8 housing rather than because she still has skilled nursing needs.

I therefore find that the nursing facility sufficiently demonstrated that the appellant's health has improved sufficiently so as not to require skilled nursing care as required by 130 CMR 610.028(2).

Next, the nursing facility must demonstrate that sufficiently prepared and oriented the resident to discharge to a safe and appropriate place pursuant to G.L. c. 111 §70E. In this case, the nursing facility has done so. Though the facility's intention is to discharge the appellant to a homeless shelter, they have demonstrated in several ways that this is both safe and appropriate for her. First, they reported a desire to refer the appellant to a sober home for discharge, but they cannot do so while the appellant denies having substance use disorder. Second, any rest homes they may wish to discharge her to do not accept residents who are on [REDACTED] as the appellant is. Third, the appellant claims to have received a Section 8 voucher, but she has not been able to provide it in hand, and it could still take three to six months for her to be placed in housing once she has received her voucher. The appellant has resided at the shelter to which she is being discharged before, and she does not have any medical needs that cannot be safely treated in the shelter.

Further, the social work and nursing teams at the facility reported working with the appellant to set up outpatient appointments for her so that they may be scheduled by the time she is in the community. There do not appear to be any more reasonable steps that the facility could take to avoid discharging the appellant to a homeless shelter, particularly where the appellant continues to deny needing assistance for substance use disorder. As such, the nursing facility has adequately demonstrated compliance with the requirements of M.G.L. c. 111, §70E in creating a discharge plan for the appellant. They have therefore met their burden of proof at hearing, and the appellant may be discharged from the facility as required in 130 CMR 610.030(A). The facility is reminded that the appellant may not be discharged until 30 days after the date of this decision.

For the aforementioned reasons, the appeal is DENIED.

Order for the Skilled Nursing Facility

None, except that the appellant may not be discharged until 30 days after the issuance 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.

Mariah Burns
Hearing Officer
Board of Hearings

cc:

Worcester Rehabilitation and Health Care Center, Attn: Lynn Wilson, Director of Social Services,
119 Providence St., Worcester, MA 01604