

**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision: Denied

Appeal Number: 2308754

Decision Date: 10/12/2023

Hearing Date: October 5, 2023

Hearing Officer: Stanley M. Kallianidis

Appellant Representative:

Pro Se

Facility Representative:



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

APPEAL DECISION

Appeal Decision:	Denied	Issue:	Health and Safety of Individuals in Facility
Decision Date:	10/12/2023	Hearing Date:	October 5, 2023

Authority

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

Jurisdiction

In a notice dated September 27, 2023, the respondent nursing home, [REDACTED], (herein after "the facility") planned on discharging the appellant because the safety and health of individuals in the nursing facility is endangered (Exhibit 1). The intent to discharge notice was with less than 30 days and scheduled as an expedited discharge (Exhibit 1). The appellant filed this appeal in a timely manner on October 2, 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 plans on discharging the appellant because she is endangering the safety and health of individuals in the facility.

Issue

Is the appellant endangering the safety of and health individuals in the facility pursuant to 130 CMR 610.028?

Summary of Evidence

On September 27, 2023, the facility issued its notice of expedited discharge to the appellant because the safety and health of individuals in the facility is endangered (Exhibit 1). The administrator from the facility testified that the appellant, an adult female under 65 years of age, was admitted to the facility three months prior to the notice of discharge. Her diagnosis was left leg pain, goiter, hypertension, morbid obesity, renal insufficiency, anxiety GERD, and bipolar disorder (Exhibit 3).

The administrator stated that the basis for the discharge is that the appellant violated the facility's non-smoking policy on several occasions, pushed a CNA, and interfered with the care of other residents. She is generally non-compliant with taking her medications and is often agitated.

Specifically, on September 10, 2023, the appellant twice interfered with the care of her roommate and was very agitated. On September 11, 2023, the appellant pushed a hospice CNA and did not allow her to provide care to her roommate. The appellant was very agitated and was issued a Section 12 discharge to the hospital. On September 14, 2023, shortly after being readmitted, the appellant was found in the parking lot in a very agitated condition. This was outside the designated patio area for residents. On September 19, 2023, the appellant was found smoking on the facility's premises. Smoking is prohibited everywhere on the facility's grounds. On September 19 and 20, 2023, the appellant gave cigarettes to other residents of the facility (Exhibit 3).

On admission, the appellant signed the facility policy regarding smoking which states that smoking and tobacco products are prohibited everywhere on the facility's premises. Upon signing the agreement, a resident acknowledges the following: "I understand and agree to enter a tobacco free facility where I will not be allowed to use smoking or any other tobacco products as defined in the Tobacco-Free Facility Policy" (Exhibit 3).

On September 21, 2023, a physician at the appellant's facility indicated that the appellant "is medically stable for discharge" and that "she does not require skilled nursing care" (Exhibit 3).

The administrator testified that the appellant's place of discharge is [REDACTED] Hotel in [REDACTED], Massachusetts (Exhibit 1). The facility has agreed to pay for two weeks of the appellant's stay while she locates more permanent housing. The facility explained that the appellant has an active Section 8 housing voucher and can use this voucher at any time. The facility has offered to assist the appellant in using her voucher to obtain housing, but the appellant has refused. The facility has provided discharge planning and has coordinated her care with her physician and her social worker.

The appellant testified that she is not a threat to the health and safety of others in the facility. She stated that she tries to get along with other residents at the facility and does not cause anyone

trouble.

The appellant did not deny smoking or giving cigarettes to other residents. However, she stated that she was not aware of the non-smoking policy of the facility. She stated that even if she did sign such an agreement, she was not aware of what she was signing. The appellant denied pushing a CNA. Regarding that incident, she stated that she was trying to get out of the room and the CNA was in the way.

The appellant further testified that she still needs the care that the facility provides, and that she may need surgery soon, depending on what her orthopedist decides. She testified that she does not want to go to the [REDACTED] and cannot afford to stay in the event that she is discharged there.

The appellant admitted that she has an active Section 8 housing voucher that she can use at any time. She stated that her son has been handling her housing search and she did not give any indication as to how this was proceeding. She stated that she is willing to accept housing if it is at a nice place.

Findings of Fact

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

1. On September 27, 2023, the facility issued its notice of expedited discharge to the appellant because the safety and health of individuals in the facility is endangered (Exhibit 1).
2. The appellant, an adult female under 65 years of age, was admitted to the facility three months prior to the notice of discharge. Her diagnosis was left leg pain, goiter, hypertension, morbid obesity, renal insufficiency, anxiety GERD, and bipolar disorder (Exhibit 3).
3. On admission, the appellant signed the facility policy regarding smoking which states that smoking and tobacco products are prohibited everywhere on the facility's premises. Upon signing the agreement, a resident acknowledges the following: "I understand and agree to enter a tobacco free facility where I will not be allowed to use smoking or any other tobacco products as defined in the Tobacco-Free Facility Policy" (Exhibit 3).
4. On September 10, 2023, the appellant twice interfered with the care of her roommate. On September 11, 2023, the appellant pushed a hospice CNA and did not allow her to provide care to her roommate. This incident led to a Section 12 discharge to the hospital (Exhibit 3).
5. On September 14, 2023, the appellant was found in the parking lot outside the designated patio area for residents. On September 19, 2023, the appellant was found smoking on the

facility's premises. On September 19 and 20, 2023, the appellant gave cigarettes to other residents of the facility (Exhibit 3).

6. The appellant's place of discharge is the [REDACTED], Massachusetts. The facility has agreed to pay for two weeks of the appellant's stay (Exhibit 1 and testimony).
7. The appellant has an active Section 8 housing voucher and can use this voucher at any time (testimony).
8. The facility has offered to assist the appellant in using her voucher to obtain housing, has provided discharge planning, and has coordinated her care with her physician (testimony).
9. On September 21, 2023, a physician at the appellant's facility indicated that the appellant "is medically stable for discharge" and that "she does not require skilled nursing care" (Exhibit 3).

Analysis and Conclusions of Law

With regard to nursing facility-initiated discharges, a resident may be discharged when the safety and/or health of individuals in the facility is endangered (130 CMR 610.028(A)(3) & (4)). The reason for the discharge must be documented by the resident's clinical record (130 CMR 610.028(B)).

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, the appellant was issued a notice of discharge from the facility because the safety and health of individuals in the facility is endangered. In conjunction with the discharge notice, a physician at the facility has cleared her for discharge finding that she does not need the care of a skilled nursing facility.

The record shows that the appellant has violated that facility's smoking policy on several occasions, a policy which she had acknowledged and signed, has interfered with the care of her roommate three times, and has pushed a staff CNA. Based upon these facts, I conclude that the appellant is indeed a threat to the health and safety of other residents and staff of the facility.

The facility is planning to discharge the appellant to the [REDACTED], Massachusetts. The facility has agreed to pay for two weeks of the appellant's stay to give the appellant time to use her Section 8 housing voucher to obtain permanent housing. The facility has offered to assist the appellant in using her voucher to obtain housing, has provided discharge planning, and has coordinated her care with her physician. I find that this complies with the discharge requirements of MGL c.111, §70E.

Where the safety of individuals in the facility is being endangered by the appellant's behaviors, and where the facility has planned her discharge in accordance with the requirements set forth above, I further conclude that the facility may discharge her as planned.

The appeal is denied.

Order for the Facility

Discharging the appellant as specified in the notice letter is authorized within five days of this decision date.

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.

Stanley M. Kallianidis
Hearing Officer
Board of Hearings

cc:

