

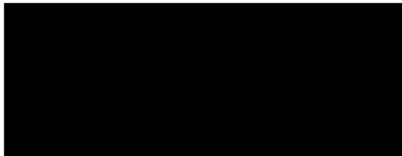
**Office of Medicaid
BOARD OF HEARINGS**

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2310020
Decision Date:	12/5/2023	Hearing Date:	11/14/2023
Hearing Officer:	Kimberly Scanlon		

Appearance for Appellant:



Appearance for MassHealth:

Via telephone
Emmanuel Ikomi, Administrator



*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:	Approved	Issue:	30-Day Nursing Facility Discharge
Decision Date:	12/5/2023	Hearing Date:	11/14/2023
Nursing Facility's Rep.:	Emmanuel Ikomi	Appellant's Reps.:	[REDACTED]
Hearing Location:	Quincy Harbor South 2 (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

Through a 30-Day Notice of Intent to Discharge/Transfer Resident dated [REDACTED] (hereinafter "Notice of Intent"), Cambridge Rehabilitation and Nursing Center (hereinafter "nursing facility") notified the Appellant that it sought to discharge him (effective on [REDACTED]) to his son's residence for failure to pay "Patient Liability." (Exhibit 1, pp. 2-3). Nonpayment applies if the resident does not submit the necessary paperwork for the third-party payment or after the third party, including Medicare or Medicaid, denies the claim and the resident refuses to pay. (130 CMR 610.028) The Appellant filed this appeal in a timely manner on or about October 19, 2023.¹ (130 CMR 610.015(B); Exhibit 2). Challenging a notice of transfer or discharge initiated by a nursing facility is valid grounds for appeal. (130 CMR 610.032).

Action Taken by the Nursing Facility

¹ The Appellant's October 19, 2023 fair hearing request was initially dismissed by the Board of Hearings (hereinafter "BOH") on October 25, 2023 for failure to receive written authorization from the nursing home resident. The BOH subsequently received the pertinent authorization and scheduled a hearing. (See, Exhibit 1, p. 1; Exhibits 2-3; Exhibit 5).

The nursing facility notified the Appellant that it sought to discharge him to his son's residence because he failed to make payment for his stay at the nursing facility.

Issue

The appeal issues are as follows: whether the nursing facility has valid grounds to discharge the Appellant; whether the discharge notice and patient record meet the regulatory requirements; and whether the facility has provided sufficient preparation and orientation to the Appellant to ensure a safe and orderly discharge from the nursing facility to a safe and appropriate place.

Summary of Evidence

The nursing facility was represented telephonically by the facility's administrator. He explained at the commencement of the hearing that the Appellant is hard of hearing and recommended that all parties testify slowly. The Appellant was admitted to the facility on [REDACTED], under PACE Skilled benefits. He became a long-term care patient under custodial care on [REDACTED] and his Patient Paid Amount (hereinafter "PPA") began on [REDACTED]. (Exhibit 6, p. 6). The facility's administrator testified that the Appellant was issued a 30-Day Notice of Intent after making several attempts to receive payment from him to no avail. He explained that prior to the hearing, in hopes that the matter would be resolved, he contacted the facility's financial coordinator. The facility's administrator further testified that the facility's finance director previously contacted the Appellant's son, who explained that he has limited funding because he is employed part-time only. Accordingly, the Appellant's son intended to contact other family members to see if any financial assistance could be arranged to assist the Appellant in paying the facility. (See, Exhibit 6, p. 7). The facility's administrator explained that the Appellant's son did not call the facility's finance director back, as of date. Currently, the Appellant owes the facility \$8,258.11. (See, Exhibit 6, p. 5).

The Appellant, his son, and social worker appeared at the hearing telephonically. The Appellant's son testified that he is trying his best to obtain funding from other family members so that he can pay the facility. He further testified that he intends to drop off a partial payment to the facility that same day. The Appellant's social worker testified that she has worked closely with the Appellant's son regarding progress made with respect to making payment to the facility. She explained that the Appellant's son has been responsive and doing his best to come up with payments.

Upon inquiry, the facility's administrator testified that social services and rehabilitation will work on a plan upon discharge to ensure the Appellant's medical needs and appropriate care have been met. He explained that if the Appellant's residence (where his son resides) is not an option, then the facility will arrange to have the Appellant discharged to another skilled facility. Upon inquiry, the facility's administrator testified that the facility made numerous efforts to receive payment from the Appellant and is doubtful a partial payment will occur.

The Appellant's son reiterated that he is trying his best to obtain funding. He explained that he was going to the bank that same day to withdraw funds so that he could make a partial payment to the facility. The Appellant's son further testified that he withdrew money from his retirement plan so that he could make a second payment to the facility shortly thereafter. The Appellant's social worker testified that from a medical standpoint, the Appellant's needs would not be met at his son's residence, thus it would not be a safe and appropriate discharge plan. She further testified that she is not aware of any other facilities that the Appellant could be safely discharged to and continue to have his needs met within the PACE program. The facility's administrator testified that there are numerous contracted agencies that could provide the same care to the Appellant. He explained that his facility is not the only facility that is contracted with the PACE program.

Findings of Fact

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

1. The Appellant is over the age of 65 and was admitted to the nursing facility in [REDACTED] (Exhibit 6, pp. 6, 8).
2. The Appellant's several medical diagnoses, include, but are not limited to, the following: Peripheral vascular disease, heart failure, sick sinus syndrome with pacemaker placement, Vitamin B12 deficiency, profound hearing loss, small bowel obstruction, constipation, osteoporosis, mild cognitive impairment, spinal stenosis, history of a stroke resulting in left-sided weakness and chronic gastrointestinal bleeding resulting in severe iron deficiency anemia. (Exhibit 6, p. 8).
3. Through a 30-day Notice of Intent to Discharge dated [REDACTED], the nursing facility notified the Appellant that it sought to discharge him effective on [REDACTED] to his son's residence for failure to pay for his stay at the nursing facility. (Exhibit 1).
4. The Appellant owes the facility \$ 8,258.11. (Testimony; Exhibit 6, p. 5).
5. The Appellant's physician submitted a letter dated [REDACTED] regarding the Appellant's medical history and conditions. (Exhibit 6, p. 8).
6. The Appellant's son intends to make partial payments to the facility on behalf of the Appellant. (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 action initiated by a nursing facility. Massachusetts has enacted regulations that follow and implement the federal requirements concerning a resident's right to appeal a transfer or discharge, and the relevant regulations may be found in both (1) the MassHealth Nursing Facility Manual regulations at 130 CMR 456.000 et seq., and (2) the Fair Hearing Rules at 130 CMR 610.000 et seq.²

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;
- (5) a statement informing the resident of his or her right to request a hearing before the Division's Board of Hearings including:
 - a) the address to send a request for a hearing;
 - b) the time frame for requesting a hearing as provided for under 130 CMR 456.702; and
 - c) the effect of requesting a hearing as provided for under 130 CMR 456.704;
- (6) the name, address, and telephone number of the local long-term-care ombudsman office;
- (7) for nursing-facility residents with developmental disabilities, the address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. s. 6041 et seq.);
- (8) for nursing-facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. s. 10801 et seq.);
- (9) a statement that all residents may seek legal assistance and that free legal assistance may be available through their local legal services office. The notice should contain the address of the nearest legal-services office; and
- (10) the name of a person at the nursing facility who can answer any questions the resident has about the notice and who will be available to assist the

² The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.000 et seq. has regulations which are nearly identical to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. and corresponding federal government regulations. Because of such commonality, the remainder of regulation references in this Fair Hearing decision will only refer to the MassHealth Nursing Facility Manual regulations in 130 CMR 456.000 unless otherwise noted and required for clarification.

resident in filing an appeal.

(130 CMR 456.701(C)).

Further, the notice requirements set forth in 130 CMR 456.701(A) state that a resident may be transferred or discharged from a nursing facility only when:

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

(See, 130 CMR 610.028(A); 130 CMR 456.701(A)). (emphasis added).

When the facility transfers or discharges a resident under any of the circumstances specified in 130 CMR 456.701(A)(1) through (5), the resident's clinical record must contain documentation to explain the transfer or discharge. The documentation must be made by:

- (1) the resident's physician when a transfer or discharge is necessary under 130 CMR 456.701(A)(1) or (2); and
- (2) a physician when the transfer or discharge is necessary under 130 CMR 456.701(A)(3) or (4).

(130 CMR 456.701(B)).

The nursing facility must also comply with all other applicable state laws, including M.G.L. c.111, §70E. The key paragraph of this statute, which is directly relevant to any type of appeal involving a nursing facility-initiated transfer or discharge, reads:

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.³
(emphasis added).

In the present case, I find the discharge notice issued by the nursing facility to the Appellant meets the regulatory requirements that are set forth above, specifically, at 130 CMR 456.701(C). Further, I find that the nursing facility has sufficient grounds to discharge the Appellant for failure (after reasonable and appropriate notice) to pay the nursing facility. However, the record reflects that the Notice of Intent issued by the nursing facility clearly states that the location of said discharge is to the residence of the Appellant and his son. The Appellant's social worker testified that this location is not a safe and appropriate plan for the Appellant, given his medical needs. Moreover, by letter dated [REDACTED], the Appellant's treating physician within the PACE program stated, *inter alia*, that the Appellant's "past medical history is significant for several and advanced conditions including but not limited to, peripheral vascular disease, heart failure, sick sinus syndrome with pacemaker placement, Vitamin B12 deficiency, profound hearing loss, small bowel obstruction, history of stroke resulting in left sided weakness, and chronic gastrointestinal bleeding resulting in severe deficiency anemia. These conditions have resulted in him becoming markedly frail and experience multiple falls when living independently . . . Due to his gastrointestinal bleed and history of poor insight into his health needs, he requires frequent monitoring for worsening bleeding." (See, Exhibit 8, p. 8). The facility testified that if the Appellant is unable to have his medical needs met at his son's residence, then the discharge plan would be to move the Appellant to another facility that is contracted with the PACE program. While there is no question that the Appellant must cooperate in the MassHealth application process and in the discharge planning process, I do not find that the nursing facility has currently provided "sufficient preparation and orientation to the resident to ensure safe and orderly transfer of discharge from the facility to another safe and appropriate place." (See, M.G.L. c. 111, § 70E). The nursing facility may re-issue a Notice of Intent to Discharge/Transfer to the Appellant with a designated discharge location that is a safer and more appropriate place, should the Appellant continue to fail to make payment to the facility for his care.

This appeal is APPROVED, for the reasoning set forth above.

Order for the Nursing Facility

Rescind the [REDACTED] Notice of Intent to Discharge.

Implementation of this Decision

³ See also 42 USC 1396r(c)(2)(C) which requires that a nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

If the 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.

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.

Kimberly Scanlon
Hearing Officer
Board of Hearings

CC:

