

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Denied	Appeal Number:	2310222
Decision Date:	11/28/2023	Hearing Date:	11/06/2023
Hearing Officer:	Patrick Grogan	Record Open to:	N/A

Appearance for Appellant:



Appearance for MassHealth:

Scott Brewer, Elizabeth Belinski, Carolyn Gure,
Christine Wilsey all from Windsor Skilled
Nursing,

Interpreter:

N/A



*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
Decision Date:	11/28/2023	Hearing Date:	11/06/2023
MassHealth's Rep.:	Scott Brewer, Elizabeth Belinski, Carolyn Gure, Christine Wilsey all from Windsor Skilled Nursing,	Appellant's Rep.:	[REDACTED]
Hearing Location:	Remote (Tel)	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 notice dated [REDACTED], [REDACTED], a skilled nursing facility, notified the Appellant of its plan to discharge her to a hotel for 7 days 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 October 24, 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 MassHealth

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. (Exhibit 1)

Issue

The issue is whether the skilled nursing facility is justified in seeking to discharge the Appellant, and whether it followed proper procedures during the discharge process.

Summary of Evidence

The skilled nursing facility (the facility) was represented by its Administrator, Director of Social Services, a Social Worker Case Manager, as well as a representative of the Business Office, all of whom appeared at the hearing by phone. They presented the following factual background: The Appellant, a female in her [REDACTED], was admitted to the facility in [REDACTED], with diagnoses of major depressive disorder, recurring, cirrhosis of the liver, generalized anxiety disorder, among other diagnoses. (Exhibit 5A, pg. 24) In a progress note from a July 11, 2023 visit, it was noted that, although the Appellant was initially approved for MassHealth, the Appellant is not a US citizen, and her Medicaid had been revoked. (Exhibit 5A, pgs. 17-19) During the hearing, representatives from the facility testified that the Appellant had been denied MassHealth due to issues with inconsistencies within submitted information including her place of birth as well as issues with her name. (Testimony) Later within the July 2023 progress note, it is noted that the Appellant is “Medically stable and independent with her ADLs. She does not require nursing home level of care. Multiple people/agencies are assisting her to obtain housing. She may need to go to a hotel or shelter from here which would be safe for her to do.” (Exhibit 5A, pg. 19)

Representatives from the facility further testified that the Appellant is unable to work due to her status within the United States. (Testimony). The Representatives entered into evidence a statement for unpaid charges from September of 2021 through September of 2023 in the amount of three hundred thirty-four thousand, four hundred eighty-seven dollars (\$334,487.00). (Exhibit 1, pg. 4) The Representatives presented an updated statement for unpaid charges from September of 2021 through November of 2023 in the amount of three hundred sixty-one thousand, nine hundred thirty-seven dollars. (\$361,937.00)

The Representatives of the facility served the Appellant the Notice of Discharge on September 29, 2023, (Exhibit 1) Along with the notice, the Representatives furnished contact information for the Long Term Care Ombudsman Program, the Disability Law Center, Centers for Public Representation, as well as Legal Service Office in Boston. (Exhibit 1, pg., 3) Additionally the progress notes beginning in July of 2023 noted that two months prior to the Notice of Discharge, Representatives of the facility had been working with the Appellant to search for options and housing upon discharge. (Exhibit 5A) In an August, 2023 progress note, it states that Appellant’s “biggest problem is homelessness. She does not require nursing home level of care nor does she have a payor source for such. It turns out she is a Canadian citizen. The team has been working with the Canadian consulate to get her back “home” to Canada.” Exhibit 5A, pg. 13) In an October 2023 Behavioral Health Group video notation, it was stated that the Appellant discussed the Discharge Notice. (Exhibit 5, pg. 15). Specifically, the discussion included the Appellant’s initial

trepidation at relocating outside of the facility, however, it was further noted that the Appellant believes she can take care of herself and keep herself safe. (Exhibit 5, pg. 15) The Appellant reaffirmed the importance of her sobriety and that it was her responsibility. (Exhibit 5, pg. 15) It was noted that the Appellant had stated that she always enjoyed travelling and was looking upon this next stage of her life as an adventure. (Exhibit 5, pg. 15)

In addition to the information supra, the Representatives of the facility also provided the Appellant with additional contact information. (Exhibit 5, pgs.8-12) The information includes contact for [REDACTED], [REDACTED] contact information through [REDACTED] and [REDACTED] Counties, as well as substance abuse program information including telephone and web site information. (Exhibit 5, pgs. 8-12). The Representatives testified that they recognize the progress she has made and are working to establish her on a path of continued sobriety. (Testimony) The Representatives testified that they are working to provide visiting nurse (VNA) services for that time at the hotel upon discharge. (Testimony)

The Appellant, along with Representatives from the Ombudsman Program, appeared telephonically. The Appellant expressed her appreciation for all that the facility has done for her to date. (Testimony) The Appellant does not contest the fact that she has been unable to pay the facility, rather, she acknowledges the difficulties with her immigration status, her inability to work within the United States currently, and her lack of familial support within the United States. (Testimony) Additionally, although the facility mentioned attempts to contact her father in Canada, the Appellant had indicated this was not a feasible plan based upon the Appellant's father's age, the duration since she last had contact with him, and her father's reported health concerns. (Testimony)

The Appellant takes issue with the discharge plan to a local hotel. (Testimony) Specifically, the Appellant stated she has been living in a "wonderful safety net" and is "protected from [her] own devices" (Exhibit 4, Testimony) The Appellant, in her submission, indicated her belief that discharge to a shelter is impermissible. (Exhibit 4, pg.4) The Appellant included pieces of a prior decision that appear to approve an appeal of a prior attempt to discharge someone from a facility. (Exhibit 4, pgs-3-4). However, as is clearly noted in the excerpt that the Appellant has included, that specific appeal was approved because "the SNF did not satisfy the requirements of 130 CMR 610.028." (Exhibit 4, pg.3) The next line of the excerpt submitted by the Appellant states " I need not reach the second issue of whether the nursing facility has met the requirement of MGL 111, section 70E and 42 CFR 483.15(c)(7) in providing the sufficient preparation and orientation to the appellant to ensure safe and orderly discharge from the facility to another safe and appropriate place." (Exhibit 4, pg. 3) The entirety of the decision is not included, nor any other identifying information along with those excerpts. If the proffered portion of the decision does pertain to this Appellant, it is unclear how much time has elapsed for the Appellant to attempt to secure stable residence and support since the issuance of that decision.

Findings of Fact

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

1. The Appellant, a female in [REDACTED] was admitted to the facility in [REDACTED], with diagnoses of major depressive disorder, recurring, cirrhosis of the liver, generalized anxiety disorder, among other diagnoses. (Exhibit 5A, pg. 24)
2. The Representatives entered into evidence a statement for unpaid charges from September of 2021 through September of 2023 in the amount of three hundred thirty-four thousand, four hundred eighty-seven dollars (\$334,487.00). (Exhibit 1, pg. 4) The Representatives presented an updated statement for unpaid charges from September of 2021 through November of 2023 in the amount of three hundred sixty-one thousand, nine hundred thirty-seven dollars. (\$361,937.00)
3. The Representatives of the facility served the Appellant the Notice of Discharge on [REDACTED] (Exhibit 1) Along with the notice, the Representatives furnished contact information for the Long Term Care Ombudsman Program, the Disability Law Center, Centers for Public Representation, as well as Legal Service Office in Boston. (Exhibit 1, pg., 3)
4. In addition to the information supra, the Representatives of the facility also provided the Appellant with additional contact information. (Exhibit 5, pgs.8-12) The information includes contact for [REDACTED], [REDACTED] contact information through [REDACTED] and [REDACTED] Counties, as well as substance abuse program information including telephone and web site information. (Exhibit 5, pgs. 8-12).
5. In an October 2023 Behavioral Health Group video notation, it was stated that the Appellant discussed the Discharge Notice. (Exhibit 5, pg. 15). Specifically, the discussion included the Appellant's initial trepidation at relocating outside of the facility, however, it was further noted that the Appellant believes she can take care of herself and keep herself safe. (Exhibit 5, pg. 15)
6. The Appellant reaffirmed the importance of her sobriety and that it was her responsibility. (Exhibit 5, pg. 15) It was noted that the Appellant had stated that she always enjoyed travelling and was looking upon this next stage of her life as an adventure. (Exhibit 5, pg. 15)

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 the 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 1, pg. 4, Exhibit 5, pg.13, Testimony). The Appellant does not dispute that the facility has not been paid, and she repeatedly acknowledged her appreciation to the facility for her care. (Testimony) The Appellant argues that the discharge plan, 7 days in a hotel with information related to support services within the [REDACTED] area, and beyond, runs afoul of M.G.L c 111, § 70E. This argument is not persuasive. On this Record, the Appellant has not demonstrated that these discharge proceedings were improperly initiated, despite her concerns regarding her long-term plans. The Appellant has local options as well the option to return to her country of origin.

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 a local hotel, and despite the Appellant's concerns, the facility confirmed that the Appellant is medically stable, and they continue to work with her about her future options. The facility has been working for months prior to the Discharge Notice to help the Appellant choose her next steps. Although the Appellant displays concerns related to her next steps, she has not demonstrated the facility's failure to adhere to the Regulatory and Statutory requirements for discharge based upon the Appellant's non-payment to the facility for over two years. Further, the facility has indicated that prior to discharge, it has provided the Appellant with contact information for multiple support services to ensure the Appellant's medical well-being, sobriety, and safety. The information regarding these services have been provided to assist with the Appellant's maintenance of her sobriety. It is still unclear at this time, whether the Appellant will remain local, or will return to Canada. Whichever path she chooses, the facility continues to work with her to build upon the success she has achieved while residing within the facility.

The Record clearly supports the progress she has made, that she is independent with her ADLs, and she is committed to her sobriety. With these measures, the facility has ensured that the Appellant's first stop will be a safe and appropriate place. Although, the Appellant has concerns, the measures the facility has taken to enable the Appellant to continue to succeed with her sobriety are well documented within this Record. Accordingly, based upon this Record, the Appeal is DENIED.

Order for MassHealth

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 of this Decision

If this decision is not implemented within 30 days after the date of this decision, you should contact your MassHealth Enrollment Center. If you experience problems with the implementation of this decision, you should report this in writing to the Director of the Board of Hearings, at the address on the first page of this decision.

Patrick Grogan
Hearing Officer
Board of Hearings

cc:

[REDACTED]