

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved/ Dismissed	Appeal Number:	2310460
Decision Date:	11/14/2023	Hearing Date:	11/14/2023
Hearing Officer:	Thomas J. Goode		

Appearance for Appellant:

Pro se

Appearance for MassHealth:

Crystal Gagnon, Director of Social Work
Karen Bergstrom, Director of Nursing
Maria Verjes, Business Office Manager



*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/ Dismissed	Issue:	Nursing Facility- Initiated Transfer
Decision Date:	11/14/2023	Hearing Date:	11/14/2023
Nursing Facility's Reps.:		Appellant's Rep.:	Pro se
Hearing Location:	Remote		

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 October 5, 2023, the nursing facility informed Appellant that he would be discharged to a hotel for failure to pay for his stay at the nursing facility (130 CMR 456.701, 610.028; Exhibit 1). Appellant filed this appeal in a timely manner on October 26, 2023 (130 CMR 610.015(B); Exhibit 2). Nursing facility residents have the right to request an appeal of any nursing facility-initiated transfer or discharge (130 CMR 456.703. 610.032(C)).

Issue

The appeal issue is whether the nursing facility was correct, pursuant to 130 CMR 456.701, 610.028 and 610.029, in notifying Appellant of its intent to discharge him to a hotel for failure to pay for his stay at the nursing facility.

Summary of Evidence

The nursing facility was represented by the Director of Social Services, the Director of Nursing, and the Business Office manager. Appellant was admitted to the nursing facility on [REDACTED] 2022 on a short-term basis, and was converted to long-term care effective [REDACTED] 2023.

MassHealth calculated a patient paid amount of \$1,740.20 which Appellant did not pay to the nursing facility. On October 5, 2023, the nursing facility issued a notice of intent to discharge Appellant to a local hotel on [REDACTED] 2023 (Exhibit 1). During the pendency of the appeal, Appellant made a partial payment of \$500 to the facility. The nursing facility representatives testified that the October 5, 2023 was therefore rescinded; however, if the patient paid amount is not paid, a new discharge notice will issue.

Appellant testified that he is generally dissatisfied with the services he receives at the facility. However, he added that he will pay the patient paid amount going forward.

Findings of Fact

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

1. Appellant was admitted to the nursing facility on [REDACTED] 2022 on a short-term basis and was converted to long-term care effective [REDACTED] 2023.
2. MassHealth calculated a patient paid amount of \$1,740.20 which Appellant did not pay to the nursing facility. During the pendency of the appeal, Appellant paid \$500 to the facility.
3. On October 5, 2023, the nursing facility issued a notice of intent to discharge Appellant to a local hotel on November 7, 2023.
4. The nursing facility rescinded the notice dated October 5, 2023.

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.¹

Before a nursing facility discharges or transfers any resident, the nursing facility must hand

¹ The regulatory language in the MassHealth Nursing Facility Manual, found in 130 CMR 456.400 et seq. has regulations which are identical (or nearly identical) to counterpart regulations found within the Commonwealth's Fair Hearing Rules at 130 CMR 610.001 et seq. as well as 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 456.400 unless otherwise noted and required for clarification.

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 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)** (emphasis added); or
- (6) the nursing facility ceases to operate.

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. (emphasis added)²

Appellant was admitted to the nursing facility on [REDACTED] 2022 on a short-term basis, and was converted to long-term care effective [REDACTED] 2023. MassHealth calculated a patient paid amount of \$1,740.20 which Appellant did not pay to the nursing facility. The nursing facility is entitled to collect the patient-paid amount which is required to be paid to the facility.³ During the pendency of the appeal Appellant paid \$500 toward the patient paid amount, and the nursing facility rescinded the October 5, 2023 discharge notice. Pursuant to 130 CMR 610.051(B) the MassHealth agency or the acting entity may make an adjustment in the matters at issue before or during an appeal period. If the parties' adjustment resolves one or more of the issues in dispute in favor of the appellant, the hearing officer, by written order, may dismiss the appeal

² 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.

³ The Patient-paid Amount is the amount that a member in a long-term-care facility must contribute to the cost of care under the laws of the Commonwealth of Massachusetts. 130 CMR 515.001.

in accordance with 130 CMR 610.035 as to all resolved issues, noting as the reason for such dismissal that the parties have reached agreement in favor of the appellant. Because the nursing facility has rescinded the October 5, 2023 notice of discharge, all issues related to the October 5, 2023 notice have resolved to Appellant's favor. Therefore, the appeal is APPROVED and DISMISSED.⁴

Order for the Nursing Facility

Rescind the October 5, 2023 notice of discharge. Do not discharge Appellant pursuant to the October 5, 2023 notice of discharge.

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.

Thomas J. Goode
Hearing Officer
Board of Hearings

cc: [REDACTED]

⁴ The nursing facility can issue a new appealable notice of discharge if Appellant does not pay the patient paid amount going forward.