

Office of Medicaid BOARD OF HEARINGS

Appellant Name and Address:



Appeal Decision:	Approved	Appeal Number:	2312445
Decision Date:	1/9/2024	Hearing Date:	12/21/2023
Hearing Officer:	Susan Burgess-Cox		

Appearance for Appellant:



Appearance for Nursing Facility:

Jeff Diminico (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:	Discharge
Decision Date:	1/9/2024	Hearing Date:	12/21/2023
Nursing Facility's Rep.:	Administrator	Appellant's Rep.:	Pro se
Hearing Location:	All Parties Appeared by Telephone		

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 November 16, 2023, the nursing facility informed the appellant that she would be discharged to an apartment in [REDACTED] Rhode Island on [REDACTED] 2023 as she failed, after reasonable and appropriate notice to pay (or have Medicare or MassHealth pay) for her stay at the nursing facility. (130 CMR 610.028; Exhibit 1). The appellant filed this appeal in a timely manner on December 4, 2023. (130 CMR 610.015(B); Exhibit 2). Notice of discharge from a nursing facility is valid grounds for appeal (130 CMR 610.032).

Action Taken by the Nursing Facility

The nursing facility issued a notice of discharge to the appellant as she failed, after reasonable and appropriate notice, to pay (or have Medicare or MassHealth pay) for her stay at the nursing facility.

Issue

Whether the nursing facility was correct, pursuant to 130 CMR 610.028, in notifying the appellant that it intended to discharge her for failure to pay (or have Medicare or MassHealth pay) for a stay

at the nursing facility.

Summary of Evidence

The administrator and two other parties appeared by telephone to represent the nursing facility. The appellant appeared by telephone along with her daughter and another representative. No clinical records were received by the Board of Hearings prior to or at the hearing. The appellant's daughter testified that she had not received copies of clinical records from the facility for this hearing. The representatives from the facility noted that they sent copies to the Board of Hearings and their submission included records to which the appellant's daughter has access to as they are the clinical records of the appellant. It was noted at hearing that the facility was obligated to present any records that they submit to the Board of Hearings to all parties as the records may contain more or less information than what they believe the appellant's representative has in her possession.

The nursing facility administrator testified that the appellant owes the facility approximately \$60,095 and has failed to make any attempt to pay or apply for MassHealth to pay for services provided during her stay at the facility. A representative from the business office stated that she talked to the appellant's daughter about applying for MassHealth and because the appellant is a resident of Rhode Island and wants to return to Rhode Island, her daughter does not want the appellant to give up her residency in Rhode Island in order to apply for MassHealth. The representatives from the facility noted that they cannot do anything beyond taking action to discharge the appellant unless she chooses to apply for MassHealth or starts to make payments on her own.

The appellant's daughter wanted short-term rehabilitation. A representative from the facility testified that the appellant clinically qualifies for long-term care but the facility does not want to continue to assist in processing any type of application for coverage if the appellant is not going to participate in the application process.

The discharge location is to the appellant's former home in Rhode Island. The facility is relying on the appellant's daughter to put services in place at the location listed on the notice on appeal. The parties did not dispute the fact there were no services in place to make a discharge to the location listed on the notice as one that is safe and appropriate. Representatives from the facility testified that the facility social worker offered to help with the discharge planning but did not make any progress in working with the family due to the appellant's insistence to return to Rhode Island and receive services in that state. A representative from the facility noted that they are seeking payment back to September 1, 2023.

The appellant's daughter testified that she is working with individuals at different agencies in Rhode Island to come up with a safe and appropriate discharge plan. The appellant's daughter did

not dispute the fact that she is not taking steps to pay for care provided since September 2023.

It was acknowledged by all involved that this was the second hearing regarding the same matter for which the appellant has failed to act to either pay the facility, work to apply for MassHealth or help develop plans for a safe and appropriate discharge. The appellant continues to receive treatment without making payments.

Findings of Fact

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

1. The appellant is a patient in a long-term care facility.
2. Prior to and at hearing, neither the Board of Hearings nor the appellant's representative received copies of the appellant's clinical records for the hearing.
3. The appellant does not have MassHealth coverage and is not in the process of applying for MassHealth coverage.
4. The appellant has not made any private payments to the facility.
5. The appellant accrued a bill in the amount of \$60,095 for services provided since September 2023.
6. The facility issued a notice to discharge for failure to pay.
7. At hearing, the appellant still had not made any payments or taken action to apply for MassHealth.
8. The location where the appellant will be returning to is an apartment in Rhode Island.
9. No services have been put in place for the appellant to receive care at this location.

Analysis and Conclusions of Law

Pursuant to 130 CMR 610.028(A) which governs the rules for actions initiated by a nursing facility, 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 Medicaid or Medicare pay for) a stay at the nursing facility; or
- (6) the nursing facility ceases to operate.

In the present case, the facility indicated on the notice that the discharge was appropriate because the appellant 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. While this is an acceptable reason for discharge and the appellant did not challenge the fact that she has not made payments or applied for MassHealth, the facility did not meet the regulatory requirements related to discharging a resident.

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)).

As of the day of the hearing, neither the Board of Hearings nor the appellant received a copy of the appellant's clinical record. The fact that the appellant may have access to these records is not sufficient to demonstrate that the facility has provided documentation to explain the transfer or discharge. It is unclear what, if any, documentation that the appellant may be allowed to access contains such information unless it is presented to the appellant for purposes of the appeal. (130 CMR 456.701(B)). Pursuant to 130 CMR 610.062, acting entities, such as nursing facilities, have certain rights and responsibilities as part of the fair hearing process. Among those responsibilities is to ensure that the relevant portions of an appellant's resident record are present at the hearing and that the appellant has adequate opportunity to examine such records before and during the hearing upon reasonable request. (130 CMR 610.062(E)). Such action was not taken in this case.

While the notice does indicate a location for discharge, the representatives from the facility did not dispute the fact that they did not have a safe or appropriate discharge plan in place. Pursuant to M.G.L. c. 111, § 70E, 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. The representatives from the facility clearly want to find a safe and appropriate location for the appellant and have an appropriate plan. However, they have not done so at this time. (MGL c. 111 § 70E).

This appeal is approved to ensure that the facility acts in compliance with the law and regulations governing a nursing home discharge. The facility may issue a proper notice and take proper action at any time.

The appellant should be aware that the facility appears to have adequate grounds to discharge as she has failed to pay (or have Medicare or MassHealth) pay for services provided at the nursing facility. The appellant did not dispute the facts related to the grounds for discharge. Simply making notice and planning errors does not make the reason for discharge incorrect, especially those that are not challenged by the appellant. While this appeal is approved, this approval does not guarantee that the appellant can continue to refuse payment to the nursing facility.

The fact that the appellant wants to return to another state and is seeking services in that state does not satisfy the regulatory requirements that she pay the facility or seek payment from Medicare or MassHealth. The appellant is placing a burden on the facility to continue to provide services without receiving payment. It was noted at hearing that this was the second appeal involving the same issue. It is unfair and inappropriate for the appellant to continue to place this burden on the facility.

Order for Nursing Facility

Rescind the notice issued on November 16, 2023.

Compliance with this Decision

If this nursing facility fails to comply with the above order, you should report this in writing to the Director of the Board of Hearings, Office of Medicaid, 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.

Susan Burgess-Cox
Hearing Officer
Board of Hearings

cc:

[REDACTED]